



» Whistleblowing programmes today and tomorrow «

17 key questions answered

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Introduction

Alongside other areas of governance, risk and compliance (GRC) within companies, whistleblowing programmes have developed significantly over the past decade, and are set to continue to evolve over the next few years.

Today, many companies are recognising the value that a robust whistleblowing programme can deliver, when it is teamed with a “speak up” culture, in which employees feel empowered to raise issues. Boards and senior managers are recognising that it is far better for an employee to flag a challenge internally, where it can be resolved, then for the issue to erupt onto social media, newspaper headlines, or a regulator’s radar.

There are other benefits, as well. Whistleblowing information from employees can help reduce risk and prevent compliance breaches, ultimately contributing to better financial performance. And the right whistleblowing programme can underpin an organisation’s overall approach to ethics and integrity, in a world where companies supporting environmental, social and governance (ESG) issues often attract better employees, more investment, and positive media attention.

Governments and regulators are also recognising the value of whistleblowers, too, from a social perspective. For example, financial services regulators have strengthened whistleblowing requirements in the wake of the 2007-8 Financial Crisis, in the belief that whistleblowing could enable issues to emerge earlier, before they become such a threat to the soundness of the financial system. More broadly, the EU is putting in place a new Whistleblowing Directive, and the UK is considering updating its whistleblowing legislation as well.

This white paper is a guide to some of the more recent developments around whistleblowing, including implementing best practices and meeting compliance obligations. It asks some of the questions most frequently raised by companies seeking to improve their whistleblowing programmes – to meet new requirements and also to deliver more business value.

Section 1:

An overview of Whistleblowing

What is the definition of whistleblowing, and a whistleblower?

The UK government defines whistleblowing as the term used when a worker passes on information concerning wrongdoing within an organisation. Generally speaking, this has been the definition used around the globe, but this is beginning to evolve as the idea about who can be a whistleblower expands.

Today, the definition of who is a “whistleblower” requires a more nuanced answer. Whistleblowing rules in individual jurisdictions and industries around the globe define who can be a whistleblower within certain parameters. Some rules say that only a current employee can be a whistleblower, while other rules are broader in scope. For example, the US Dodd-Frank Act says a “whistleblower” is “any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of the securities laws to the [Securities and Exchange Commission (SEC)], in a manner established, by rule or regulation, by the Commission.”

As a result, any whistleblowing programme must be sure to take into account any definitions of “whistleblowing” that apply, as well as the specific community of individuals considered to be whistleblowers. Whistleblowing policies should also consider how it might handle whistleblowing by individuals not covered – for example, if just employees are covered by whistleblowing rules, should contractors, employees of third parties, and former employees also be protected? Having a wider definition of who can be a whistleblower can have positive effects for the organisation’s overall speak-up culture.

What is a whistleblowing programme?

An effective whistleblowing programme ensures that any issues raised are dealt with both promptly and effectively. By having a clear whistleblowing programme that everyone understands, organisations show their commitment to listening to their employees, and that they welcome such information being brought to their attention.

Also, the information received through whistleblowing programmes enables organisations to manage risk more effectively, by uncovering and resolving issues efficiently. These programmes also reduce the possibility that employees will take their concerns outside of the organisation, to the media, regulators, and investors, or on a social media platform.

Overall, robust whistleblowing programmes, when coupled with a “speak up” culture, can signal to investors, employees, regulators, third parties, and other stakeholders that the organisation is serious about ethics and integrity within the business.

What kinds of issues are whistleblowing programmes designed to catch within organisations?

Whistleblowing programmes should be able to catch a wide range of issues arising within an organisation – ranging from events created by the traditional risks the organisation is familiar with, to emerging risks that may be new and experienced for the first time.

Today, boards and senior managers should be particularly aware of potential whistleblowing around the following themes:

- historic or current racism
- Covid-19 pandemic furlough fraud
- discrimination or harassment based on gender
- anti-bribery and corruption infractions
- the use of slave labour or inappropriate working practices by third parties
- risks to employee or public safety related to the Covid-19 pandemic
- data protection and privacy

- IT system breakdowns or cybersecurity breaches
- Money laundering
- Tax evasion

Some of these risks are new, while others may be manifesting in novel ways today. If implemented in the right way, whistleblowing programmes can help organisations avoid loss events and compliance breaches related to these risks.



Is a whistleblowing programme a regulatory requirement?

Around the globe, legal frameworks around whistleblowing are beginning to change rapidly. EU countries are expected to pass the Whistleblowing Directive into national law by December 2021, and so organisations based in the EU can view that date as a potential deadline for having their own whistleblowing programmes in place.

As a result of Brexit, the UK is not implementing the EU Whistleblowing Directive, but UK-based companies can expect to see new rules implemented there over the next couple of years. In the US, where there is a strong trend toward paying financial incentives for whistleblowing, rules are also changing. For example, in December 2020, the SEC changed its rules to improve transparency, and increase the potential rewards for whistleblowers.

Today, some companies are required by law to have a whistleblowing programme in place. For example, in the UK, organisations in the health, finance and aviation sectors have explicit whistleblowing regulatory obligations to meet. UK listed companies are also required to have whistleblowing arrangements in place. This same kind of patchwork of whistleblowing regulations by industry and by legal jurisdiction is in place elsewhere. For example, the EU Whistleblowing Directive only applies to breaches of EU law, although EU member states can choose to have it apply to their own national laws too. The US is covered by an array of whistleblowing rules, such as Dodd-Frank/SEC, Sarbanes-Oxley, the Whistleblower Protection Act of 1989 for federal employees, and the Occupational Safety and Health Administration (OSHA) Whistleblower Program, which enforces the provision of more than 20 federal, industry-focused sets of rules.

The overarching trends within whistleblowing regulatory change is to make the definition of who can be a whistleblower broader, make the process more transparent, and to increase the penalties for retaliation. For example, the UK has had the Public Interest Disclosure Act (PIDA) for more than 20 years. While PIDA was groundbreaking at the time it was passed, today its critics say it is relatively ineffective. For example, the law only protects certain types of disclosures, disclosures made to certain appropriate people, and it only protects actual employees – it does not protect contractors or agency workers. Also, it does not explicitly require companies to put in place special procedures to handle whistleblowing issues.

However, regulatory change is in the works. Several competing draft bills are in front of the UK Parliament in the first half of 2021, which expand the scope of the existing whistleblowing regulations, and call for the creation of an independent body to oversee whistleblowing in the UK.

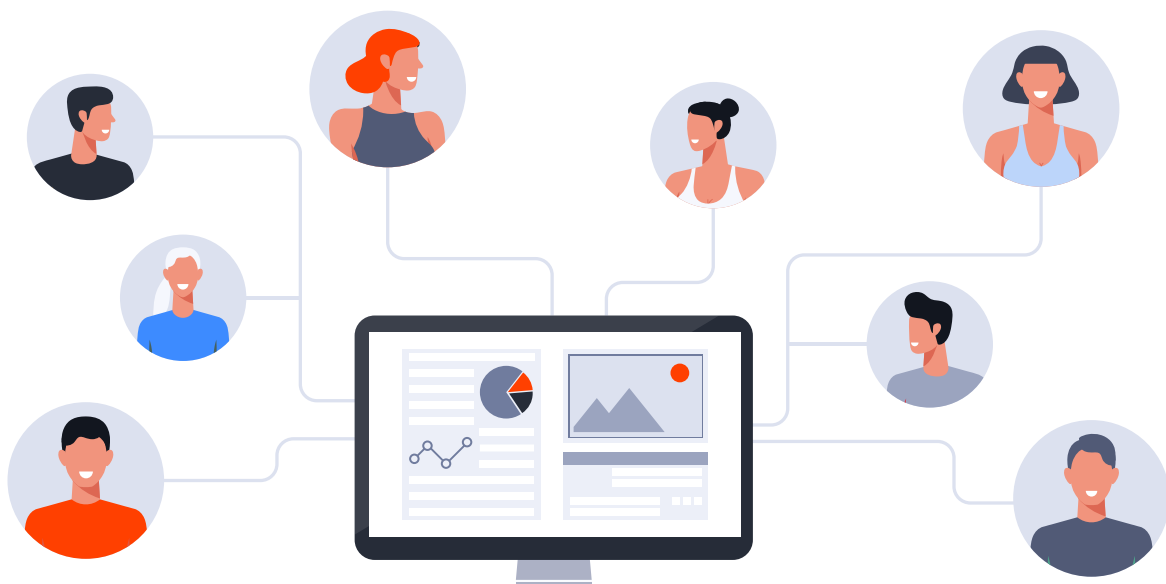
So, it's important to be aware of the whistleblowing regulations that apply to your organisation at the moment, and to keep on top of potential regulatory change ahead. Implementing a best practice approach to whistleblowing can enable an organisation to adapt to regulatory change in this area with more agility.

What are the business benefits of having a robust whistleblowing programme in place?

An organisation's employees are the best source of risk intelligence – they are a very efficient early warning system. So, many companies put reporting programmes, including whistleblowing, at the heart of their approach to risk management and compliance. A growing body of research supports a clear link between internal reporting system usage, including whistleblowing programmes, and positive business performance.

Enabling employees to speak up about potentially damaging issues in the workplace can enable the organisation to catch risks at a time when they can be proactively managed, reducing both the likelihood of the risk materialising again, and the severity of any potential impact. Reducing loss events in this way will greatly diminish a company's overall levels of risk, including financial risk, compliance risk, and reputational risk. This will save the company from potential financial losses as well as protect future growth.

Having a strong whistleblowing programme, and speak-up culture, will also highlight the organisation's commitment to ethics and integrity, supporting its overall ESG strategy.



Section 2: The importance of culture

What should the board's role be in a whistleblowing programme?

Legal whistleblowing requirements for boards of directors vary by jurisdiction. For example, today in the UK, whistleblowing is a board-level responsibility for listed companies, according to the new Corporate Governance Code. In the US, boards of companies that fall under the jurisdiction of the Sarbanes-Oxley Act must put in place a whistleblowing programme, with the Audit Committee playing a substantial role. The EU Whistleblowing Directive is less specific about the formal role that boards of directors should play.

However, organisations would do well to look beyond the specific legal requirements for boards when shaping or enhancing their whistleblowing programmes. Today, many whistleblowing rules are ramping up the involvement of the board of directors by other means. For example, in the US, the SEC's financial incentives for whistleblowing are motivating boards to ensure that their organisations have strong internal reporting cultures, so that employees report internally first. Within the EU, some boards are choosing to have a board member responsible for whistleblowing, and to increase board oversight of this area, as a part of an overall desire to boost their ethics programme within their ESG strategy.

In general, having board provide oversight over the whistleblowing programme is considered best practice, even if it is not a regulatory requirement. This is because whistleblowing is a very important risk management tool. Whistleblowing can provide boards with early insight into issues deep within the organisation that would otherwise be challenging for the board to identify. Whistleblowing information can also help the board hold the organisation to account.

Boards have an important role to play in setting the right tone-from-the-top across the whole of the firm, to nurture a successful culture that supports whistleblowing and whistleblowers. Employees need to feel that it is safe to speak up, and that whistleblowers will be protected from reprisals. Boards are in a unique position to be able to provide assurance about this, to support a speak-up culture.

It is considered best practice for the board to have a board member explicitly responsible for overseeing the company's whistleblowing programme. This individual should be a champion for the whistleblowing programme, as well as provide oversight for the programme, and hold those who operate the programme to account. In some sectors, having a non-executive director oversee the whistleblowing programme is compulsory.

The board doesn't need to directly manage the whistleblowing programme. Instead, it should receive enough information to be able to scrutinise whistleblowing processes to ensure that they work, and to ascertain if people feel free to speak up within the organisation. To support this, the board should receive regular reports on the whistleblowing programme and whistleblowing activity within the organisation.

How do you ensure that this psychological safety is present throughout the organisation?

The “tone at the top” is very important when it comes to creating and maintaining psychological safety around whistleblowing. The board and senior management need to support the psychological safety aspect of the overall speak-up culture – by both what they say and what they do. With whistleblowing, actions can often speak much louder than words.

For example, middle managers can respond inappropriately or engage in retaliation in response to a whistleblowing complaint. This can be because they may have the most directly at stake, in terms of the whistleblowing issue, or because they fail to perceive the problem in the same way as the whistleblower. Boards and senior managers need to make sure that the importance of supporting the speak-up culture penetrates deep into the middle management layer, and that middle managers feel psychologically safe too.

Psychological safety can be nurtured through training, which is repeated regularly, as well as awareness-raising campaigns. Organisations that suspect there is an issue around psychological safety should consider formal training and communications programmes, as well as conversations with middle managers, 1-2-1 or in small groups. Middle managers should be made aware that raising potential risk issues or compliance breaches that have been brought to their attention, or that they have found themselves, will be praised and will enhance their career prospects.



Should whistleblowing be a core part of a firm's overall approach to ethics and integrity?

In a word, Yes. In today's world, environment, social and governance (ESG) issues are of growing importance to customers, investors, regulators, employees, and third-party partners such as vendors. A robust whistleblowing programme should be a cornerstone of a firm's overall ESG strategy because it can provide early warning signals of potentially damaging ESG issues within the firm.

Having a strong speak up culture within an ethics and integrity framework has other benefits as well. For example, in today's social media culture, allegations against a company can spread like wildfire. It is bad enough if issues appear on social media platforms, and are not raised internally instead. It is much worse if an employee also puts forward anti-whistleblowing allegations, such as retaliation. One impact could be that potential employees who do an online search will find these allegations, and be put off working for the organisation, because it is perceived to lack integrity.

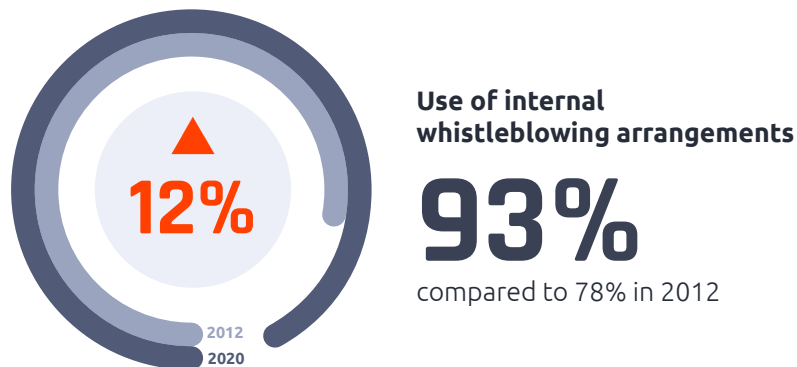
Indeed, views on whistleblowers are changing. Although in the past, a whistleblower was often caricatured as an anti-social person with an axe to grind, the reality is often very different. Usually, whistleblowers are dedicated employees who work hard for the organisation, believe in its mission, and wish to see it thrive. They only turn to whistleblowing when other attempts to raise an issue have failed – they feel that they have not been heard, or they do not see action being taken. Putting an ethics and integrity policy into action means ensuring these employees' concerns are addressed, and that the employees feel safe raising those concerns.

How has whistleblowing changed in the financial services sector recently?

A good example of how approaches to whistleblowing are evolving is the UK financial sector. In 2018, Barclays Group was fined £15 million, and its CEO James Staley was fined more than £640,000 because of attempts by Staley to identify an anonymous whistleblower. The firm now has to report annually to the Financial Conduct Authority (FCA) and Prudential Regulatory Authority (PRA), detailing how it handles whistleblowing, with personal attestations required from those senior managers responsible for the relevant systems and controls.

Although the FCA had required financial firms to put in place more robust whistleblowing arrangements in 2016, the Barclays case was a watershed moment. Firms could see the damage that the case inflicted on both Barclays and its CEO – from the dissonance in the “tone at the top” around whistleblowing to a substantial drop in whistleblowing cases reported within the firm in the following years, damaging an important source of risk and compliance feedback.

The good news is that progress is being made within the financial services industry's whistleblowing programmes. According to the Silence in the City 2020 report, use of internal whistleblowing arrangements has jumped 12%, from 78% in 2012 to 93% in 2020. There is also increased awareness of internal whistleblowing programmes, and whistleblowers are more persistent in raising their concerns, according to the report.

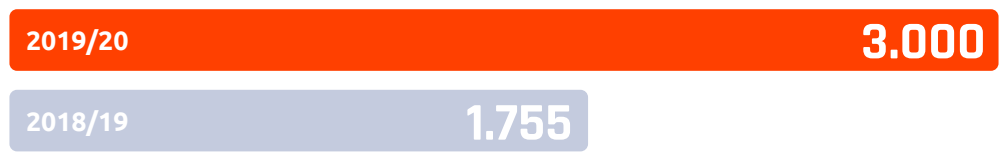


Overall, whistleblowing seems to be on the rise within the UK financial services industry. In the UK Financial Conduct Authority's (FCA's) annual reports for 2018-2019 and 2019-2020, the number of whistleblowing allegations rose from 1755 to 3,000, or about 70%.

However, there is still some distance for the financial services industry to travel. According to the Silence in the City 2020 report, seven out of 10 whistleblowers experienced some form of victimisation, and most employers took no action to resolve that victimisation. Also, according to the report, one-third of cases were ignored by employers.

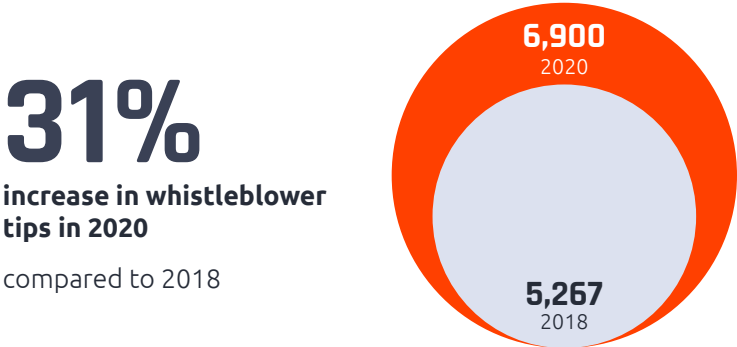
While it's clear that substantial progress is being made within financial services in the UK, it seems that firms still have work to do, to help make employees feel safe about raising issues internally by ensuring that retaliation is a thing of the past.

70%
raise in the numbers of whistleblowing allegations

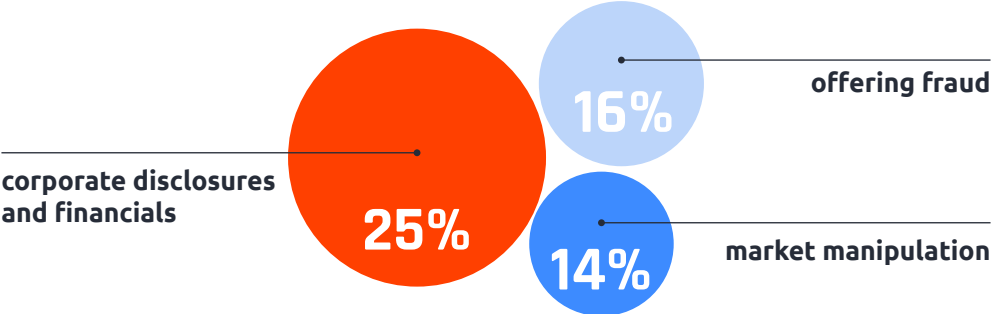


Another good example of change within the financial services industry is the SEC's robust approach in the US. There, the regulator has paid out many awards in the tens of millions of dollars – leading to record numbers of individuals coming forward to raise issues.

In FY 2020, the SEC received over 6,900 whistleblower tips. This is a 31% increase over the previous record year, 2018. A large chunk was whistleblowing over corporate disclosures and financials (25%), offering fraud (16%), and market manipulation (14%). In the press releases the SEC publishes around each award, the regulator often notes how whistleblowing information can uncover wrongdoing that would be otherwise very challenging for the SEC to detect on its own.



These awards have been so successful that they are being expanded to other compliance areas. In January 2021, the US passed into law the Anti-Money Laundering Act, which establishes fresh whistleblower protections for financial firm employees. The new rules significantly boost the potential value of awards for whistleblowers under the Bank Secrecy Act (BSA).



As a result of the shift to cash incentives within the US financial services industry, US financial services firms are putting an increase focus on fostering a speak up culture so that issues can be handled internally first. However, these are meeting with mixed success – 81% of insiders who were whistleblowers to the SEC in FY 2020 reported their concerns internally first, to their supervisors, compliance personnel, or through internal reporting mechanisms before reaching out to the SEC, presumably because the allegations were not addressed through internal processes.

Do financial incentives for whistleblowing work?

The US, the Dodd-Frank Act of 2010 created a financial reward for whistleblowers whose information leads directly to a successful enforcement action, which then results in the imposition of a fine. The reward is paid by the SEC from the monies received from the fine. By April 2021, the regulator had paid out about \$812 million to 151 individuals since the programme began in 2012. Proponents of the scheme say that the incentives encourage individuals to step forward, and rewards them for their courage. As noted, whistleblowing rewards are being incorporated into other financial services regulatory schemes, and Canadian and Australian regulators have adopted reward schemes, too.

However, others say that the financial rewards are not necessary – that real whistleblowers are motivated by things other than money to come forward. There are concerns that the financial awards help to generate spurious complaints. As well, the US programme only actually benefits a small number of those who come forward through the whistleblowing programme each year – only those whose allegations result in the successful imposition of a financial penalty.

There are other potential downsides to awards, as well. If the award is offered by a regulator, it could encourage employees to go straight to the regulator rather than through internal processes. In many industries, it would be difficult to calculate the size of the reward that should be made, and what it should be paid from, in the absence of a regulatory fine. As a result of some of these downsides, at the moment, it seems unlikely that the UK FCA or government are going to implement a whistleblowing awards scheme, and awards are not a part of the EU Whistleblowing Directive.

In short, the jury remains out about the effectiveness of financial incentives, as well as the impact that these have on fostering a speak up culture internally within firms. At the moment, awards remain an active experiment within whistleblowing regulation.

Section 3:

Best practices for companies

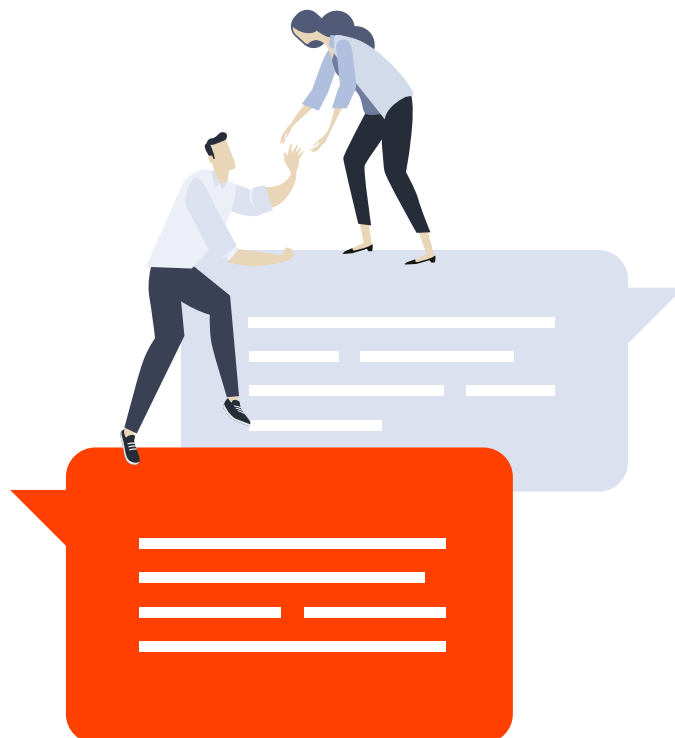
What are some best practices around communicating a whistleblowing system within a company?

At the heart of a robust whistleblowing programme is strong communication with all of the stakeholders involved. Stakeholders need to understand that the whistleblowing programme is a part of a wider ethics and integrity culture. Having a whistleblowing system in place that no one knows about, or which employees are worried about engaging with, is as ineffective as not having one at all. Key best practices include:

- All whistleblowing reports should be responded to in an appropriate way and in a timely manner. This helps to build trust and foster the right overall culture.
- All employees should receive whistleblowing training, so that they understand how to raise an issue, including how to do so anonymously. They should also know what will happen to the issue they have raised via whistleblowing channels – what the process is for investigation and resolution.
- Protections against retaliation for whistleblowers should be communicated clearly. Policies should state what happens in the event of reprisals, and action should be taken if reprisals occur. Retaliation against employees for whistleblowing is illegal in the UK, as well as under the EU Whistleblowing Directive.
- Senior management and the board should set the “tone from the top” through regular communications in support of the whistleblowing programme. A video from the CEO can often help foster a speak-up culture – “tone from the top” should be integrated in regulator communications, not just a once a year “state of the nation” address
- Whistleblowing communications should take the form of an internal strategic marketing programme, on top of training. Communications can include email newsletters, giveaways, online employee events, and information on the corporate intranet. For employees who are working in a company premises, flyers, posters, and banners work well.
- Pastoral care should be given to the whistleblower, as this will be a stressful time for this individual. Providing pastoral care can also reduce the number

of grievances raised during whistleblowing processes. The person providing the care should be kept separate from the investigation, to avoid charges of conflict-of-interest.

- Managers need to be trained on the importance of creating psychological safety within their teams so that people feel comfortable speaking up, how to handle a whistleblowing issue when an employee comes to them, as well as on the processes for managing a whistleblowing issue.
- Whistleblowing concerns many teams across an organisation, including human resources, legal, risk, compliance, data privacy, and media relations. All of these teams should be trained regularly on their whistleblowing responsibilities and communication channels established.
- Risk management teams should have access to whistleblowing data, and this information should be used within risk analysis and risk management activities. The outcomes of this work should be shared with senior management and the board.
- Communicating outcomes of cases across the organisation (where appropriate and where confidentiality would not be breached) to build trust in the programme.



How can technology help improve the efficiency of whistleblowing processes?

As with many GRC programmes, whistleblowing involves a wide range of stakeholders across the organisation in time-sensitive processes that involve protected information and personal data. Managing processes and data using manual means can be resource-intensive, create new risks and lead to potential compliance and data breaches. Having a whistleblowing technology platform is considered best practice today because it enables companies to:

- **Capture all whistleblowing information** – By enabling whistleblowers to engage with a web portal, telephone line, or an app to report their issue, companies can immediately capture and store important information in an electronic format.
- **Create a single source of whistleblowing information** – Having all of the information about whistleblowing cases stored in one place means that those who need access to this information can find it all in a single location.
- **Controlling access to whistleblowing information** – At the same time, robust access permissions around whistleblowing case data ensures that only those who need to know can get access to the information.
- **Automating whistleblowing workflows** – Each whistleblowing case involves a range of teams across the business in dozens of workflows. Technology enables these workflows to be automated, saving time and improving efficiency.
- **Reporting on whistleblowing activities** – With all of the data in one protected place, teams responsible for whistleblowing will find it much easier to create the reports that senior management, the board, and regulators need. In turn, those stakeholders will be able to put more trust in the data, because it is being managed in a robust environment.
- **Auditing whistleblowing activities** – When it comes time to produce information for internal or external auditors around the strength of the whistleblowing programme, implementing a technology system enables auditors to have confidence in the quality of the information they are reviewing, as well as in the governance around that data.



For financial services firms, what is the interaction between the FCA's whistleblowing requirements, and Senior Managers & Certification Regime?

UK financial services firms are already subject to a more robust whistleblowing framework than many other industries, and the new Senior Managers & Certification Regime (SMCR) adds additional rigour.

The UK FCA has a much broader definition of the kinds of issues that can be protected under a whistleblowing programme, beyond the protected disclosures included in PIDA. Financial firms must have a whistleblowing programme in place, alongside a range of other measures. Individuals also have the right to raise issues directly with the FCA or the UK's Prudential Regulatory Authority (PRA).

The SMCR – a set of rules implemented by the UK FCA to enable it to hold senior managers to account in the event of a compliance breach – is designed to sit alongside the regulator's whistleblowing rules. These two sets of rules, taken together, add an additional layer of complexity for senior managers. For example:

- Under SMCR, senior managers have to make sure the business meets its regulatory obligations, and take reasonable steps to ensure that it has effective controls in place. This includes meeting whistleblowing requirements.
- This also includes supporting whistleblowing programmes as a form of effective control. Senior managers need to ensure that issues raised through whistleblowing are investigated through the right processes, and that risks and controls are modified, if required.
- Regulated banking firms also subject to SMCR must have a whistleblowing champion senior manager, who is given the prescribed responsibility for ensuring and overseeing the integrity, independence and effectiveness of the firm's whistleblowing programme.
- If a firm or an employee retaliates against a whistleblower, the firm's suitability or the employee's fit-and-proper status could be withdrawn, under SMCR.

Now that SMCR is in place for most financial services firms operating in the UK, it's important for them to take SMCR into account at every step of resolving a whistleblowing issue. Consider engaging early with the FCA around whistleblowing issues, particularly if the issues that have been raised will have an impact on the fitness and propriety of an employee or senior manager.

Why has the COVID-19 pandemic heightened the need for whistleblowing processes to be automated?

When the Covid-19 pandemic hit in March 2020, with repeated lockdowns, many employees were forced to work from home, and on-premises working conditions for other employees changed dramatically. Many organisations saw these changes impact their whistleblowing culture in a variety of ways. Now, many firms who seek to have a best practice whistleblowing programme are making the following changes:

- **Reinforcing the speak-up culture** – With more employees working from home for the foreseeable future, it's important that they are able to access whistleblowing resources online, including websites, telephone lines, and apps. Online training, which can be done anywhere, is another good way to ensure that employees remain engaged in the organisation's culture.
- **Automating whistleblowing processes** – With most of the teams that handle whistleblowing issues – HR, risk, compliance, internal audit, etc. – working from home as well, it can be very challenging to handle cases using manual tools such as email, spreadsheets, and shared drives. Using dedicated technology to automate processes will help these teams stay connected and move investigations forward.
- **Ensuring whistleblowing protection** – Whistleblowing case information is highly sensitive, and should be protected by being housed in a single place with clear access permissions, when a workforce is operating remotely. Organisations should not risk the possibility of case information leaking out into the public, or internally in a way that could lead to retaliation.

An important outcome of the Covid-19 pandemic seems to be an increased focus on ESG by investors, regulators, and the general public. There is a growing assumption that companies of a certain size will invest in the tools needed to support a robust whistleblowing programme and speak-up culture, as part of its approach to ethics and integrity, within an overall ESG strategy.



What are some important tips for internal whistleblowing investigations?

Whistleblowing investigations are highly sensitive, and must be handled in the right way. Some key best practices include:

- Have an initial triage system in place to help identify whether issues raised qualify as whistleblowing or are an employee grievance.
- Create an investigation plan that must be followed, as part of the whistleblowing policy. This ensures a transparent approach to how investigations are conducted, and that investigations are conducted on a level playing field.
- Meet early on with the whistleblower (if they have not chosen to remain anonymous). This is often a good way to establish a constructive relationship with the individual, and also gather additional material for the investigation.
- Maintain an “in the know” list of those directly involved in the whistleblowing investigation. This helps when internal or external lawyers – and so legal privilege – is involved.
- Create a clear audit trail of documentation. This can help an organisation ensure that a robust investigation of issues raised is conducted, which can be of benefit for both risk management and compliance. Also, having this material is very useful in the case of lawsuits, employment tribunals, and grievances.
- Record all whistleblowing investigations from the very beginning. This includes preserving documents, searches and reviews; keeping notes of all conversations with employees and third parties; and recording actions taken and steps taken to test or validate the issue raised.
- In particular, take notes about how the scope of the investigation is decided and who is involved in this process. Also record engagements with the whistleblower, as well as those being investigated, the pastoral care given, and the outcome of the investigation.

In the UK, all whistleblowing activities must comply with the UK General Data Protection Regulation (UK GDPR), so information must be kept safe and secure. Within the EU, the EU GDPR applies. Data privacy regulations in the US are more of a state-by-state patchwork – with some federal rules in place for certain industries – so organisations need to be sure that they are complying with all applicable requirements. Only those who need access to documents should be granted access, and collection of personal data should be strictly limited to what is essential.

What should the role of internal audit in whistleblowing be?

Thanks to its independence and objectivity, internal audit has the potential to play an important supporting role within a whistleblowing programme. In fact, today many internal audit teams oversee their organisation's whistleblowing programme, or play a variety of other roles, including:

- Many internal audit teams investigate issues raised by whistleblowers, particularly if they are related to fraud or corruption within the organisation, or if the complaint relates to teams with whistleblowing programme responsibilities, such as human resources, legal, or compliance.
- Internal audit teams also often manage third party providers of whistleblowing programme services, such as a hot line.
- Internal audit can work with risk management and compliance to conduct a root cause analysis of the issues identified through a whistleblowing complaint. This can help mitigate future risk in the area by identifying compliance and control gaps, as well as suggesting new compliance processes and controls.
- Whistleblowing programme reports are often compiled by internal audit teams for the board of directors.
- Internal audit teams can help benchmark the whistleblowing programme against a well-respected whistleblowing standard.

It should be noted that if the internal audit function is playing an active role in supporting the whistleblowing programme, internal audit is no longer able to provide assurance around that portion of the whistleblowing programme. The board's internal audit committee should work with the internal audit team to make sure that internal audit's involvement with whistleblowing doesn't impact its ability to provide assurance within the organisation. There also needs to be an independent mechanism to provide assurance about the portion of the whistleblowing programme that internal audit is involved with.



Governance and reporting

What are important governance and reporting requirements around whistleblowing?

Organisations should have regular audits of the effectiveness of their whistleblowing programmes, and the results of these audits should be made available to the board and senior management. These reports should include information about:

- Statistics on whistleblowing issues raised, including number, types, and the outcomes of any investigations
- Information on how outcomes have supported the overall compliance and ethics and integrity programmes
- Feedback from those who have engaged with the whistleblowing programme
- Detailed information about any cases of retaliation that were raised, confidentiality broken, or data privacy breached
- A review of adverse incidents that should potentially have been flagged by employees but were not
- Analysis of the effectiveness of the programme, the level of awareness and trust among employees.
- Benchmarking of the whistleblowing programme and statistics where possible against other programmes or standards

Other elements can be included in this reporting too, such as analysis of other types of reporting mechanisms, related litigation, and the effectiveness of the reporting itself.

Many organisations need to share information about their whistleblowing programmes in their annual reports as a regulatory requirement. Those organisations that are not under such an obligation should consider sharing this information anyway, as it will reassure external stakeholders such as investors and regulators about the strength of the whistleblowing programme.

What are best practices around sharing investigation outcomes?

Once a whistleblowing investigation is concluded, results will need to be shared with several stakeholders, including the whistleblower, employees who were directly impacted by the investigation, senior management, the board, and potentially regulators.

- **The whistleblower** – It is important to prepare in advance for this conversation. If the investigation has not proven the allegations that had been made, it can be a particularly challenging conversation to have. Determine what information can be shared, and how you will disclose the information. If the individual had pastoral support, it can be a good idea for that person to be made available after the meeting, no matter the outcome. Be clear about any next steps there may be.
- **Employees who were the focus of the investigation** – If, as the result of a whistleblowing investigation, employees will be directly impacted, it is important to have these conversations sensitively. Again, preparation before the meeting is essential – particularly regarding what material can be discussed, and what is confidential. Retaliation rules should be reaffirmed, and next steps stated clearly.
- **Teams across the business** – Whistleblowing investigation outcomes can be shared with the business, but considerable thought should go into these communications. Sharing outcomes can make the whole whistleblowing process seem more transparent, but sometimes sensitive material can be challenging to share. If a whistleblowing case needs to be communicated broadly across the business, it can be a good idea to involve internal communications (or outside specialists) as early as possible to develop a strategy that supports the programme, enables benefits such as reduced risk and improved compliance to be achieved, and at the same time protects sensitive information. The aim here is to build trust in the programme and demonstrate that the case was taken seriously and acted upon.

Communicating outcomes of whistleblowing investigations requires the same level of care and attention to detail as the rest of the whistleblowing programme and investigation process.

There may be times when it's not appropriate to communicate the outcome of a whistleblowing investigation beyond a very small group. In these cases, it is just as important to have a legal/communications strategy in place to ensure material does not find its way into the public domain.

How should the success of a whistleblowing system be measured?

Senior managers and boards should develop a good set of key performance indicators (KPIs) that they measure the success of their whistleblowing programme against.

These KPIs should be developed by working with those who have expertise in whistleblowing programmes, and can also be derived from whistleblowing standards, for example. Having the right KPIs in place is important, as is knowing how to interpret the KPIs.

For example, there is no “correct” level of whistleblowing issues for an organisation. A low number of issues could indicate that people are afraid to speak up, and a high number could show that people are comfortable with raising an issue. However, those numbers could also indicate other challenges. One telling statistic is how many employees raise issues anonymously – having a high ratio of anonymous employees could indicate concerns about retaliation.

It is also essential to sometimes seek the information behind the KPIs. For example, examine risk management loss event and compliance breach reports side-by-side with whistleblowing reports. Look for issues raised by others outside the organisation that should have been raised by employees, and ask why. If an issue is raised initially by customers, suppliers, or partners, it can be useful to try to uncover why employees didn’t speak up about the issue first. This exercise can also often be done fruitfully with fraud reporting, or health and safety reports.

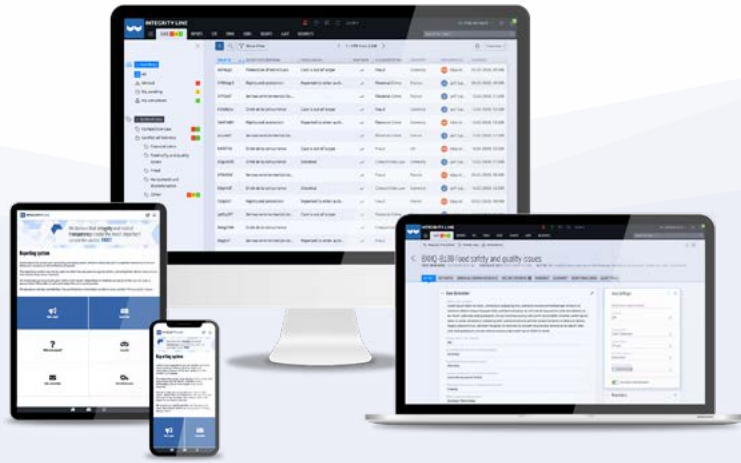
New senior managers and board directors might also wish to see past whistleblowing reports, and to look at those in the context of new reports they are given. It can be informative to look through those reports and ask what the organisation has learned from whistleblowers in the past. How seriously were the issues taken? What compliance breaches, process breakdowns, or control failures were identified?

Conclusion

The flurry of new and expanded whistleblowing rules that are coming into force around the globe may make companies feel they need to respond by implementing a formal whistleblowing programme. However, organisations stand to gain much more from implementing a formal whistleblowing approach and fostering a speak-up culture if they take a proactive, rather than a reactive, stance. Whistleblowing programmes, implemented and maintained correctly, can deliver significant value to the organisation and its stakeholders.

In addition to reducing risk and the possibility of compliance breaches, a robust whistleblowing programme can raise issues that senior managers and boards may not have been aware of, otherwise. Having a speak up culture can help a business become more efficient, enhance financial performance, and improve its reputation with customers, third parties, regulators, and other stakeholders.

In fact, a whistleblowing programme grounded in best practices can signal that a company “walks the talk”, with a culture rooted in strong ethics and integrity. Today, with the growing importance of ESG for everyone from the workforce to investors, building a speak up culture underpinned by the right whistleblowing programme can deliver significant benefits for organisations long into the future.



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