

# *How whistleblowing helps companies*

CORPORATE GOVERNANCE: CONNECT AND REFLECT



# Contents

HOW WHISTLEBLOWING HELPS COMPANIES	1
FIVE BENEFITS OF WHISTLEBLOWING	2
1. Reveals inconvenient truths	2
2. Promotes structured learning	2
3. Empowers people	2
4. Provides unique insights	3
5. Signals excellence	3
ACTION PLAN FOR BOARDS	4
1. Overcome resistance	4
2. Mean business	4
3. Be prepared	5
4. Align incentives	6
5. Keep at it	7
CONCLUSION	8

## *How whistleblowing helps companies*

Whistleblowing is central to a company's system of checks and balances. Whistleblowing shields companies from reputational and other risks. The ability to blow the whistle reflects shared responsibility and positive culture.

An individual rarely takes the decision to blow the whistle lightly, and companies must apply the same degree of importance to this area because they have just as much to win or lose. By taking a positive approach companies can show respect towards their employees and demonstrate an appetite for continuous improvement.

Whistleblowers speak-up because they refuse to give up on their company. They have faith that the company will listen to their concerns and that lessons will be learned. Companies can mirror this optimism if they start by recognising the five benefits of whistleblowing and then follow our five point action plan.

## *Five benefits of whistleblowing*

### 1. REVEALS INCONVENIENT TRUTHS

Whistleblowing is an essential last line of defence in companies' systems of internal control, and it is a weapon to root out complacency and inertia. Whistleblowing gives companies a chance to receive direct and raw feedback that is untainted by self-interest and unfiltered by management. The usual language and diplomacy of the workplace is suspended. Whistleblowers can be candid, frank and fearless.

Whistleblowing can concern matters that were previously unknown to the company, or it can ensure that the seriousness and extent of a known issue is fully understood. Whistleblowing may be retrospective about things which have already gone wrong, or provide the wake-up call that prevents a crisis from occurring. Early intervention is the best form of damage limitation.

#### **Stopping the production line**

Andon is Japanese for 'sign' or 'signal'. It is a visual aid which highlights where action is required. Andon forms part of the manufacturing process at Toyota worldwide. All employees can activate Andon. If workers on the production line activate Andon because they think they see a problem then the production line is stopped, even though this incurs significant expense.

### 2. PROMOTES STRUCTURED LEARNING

Companies prepare for the future by anticipating future needs and investing in the knowledge and skills of their staff. Companies also need to be learning organisations. Whistleblowing forces companies to pause, take stock and learn difficult lessons.

#### **The Black Box**

An air crash is a personal tragedy and it could spell reputational disaster and commercial ruin for the airline or an aircraft manufacturer. Comprehensive investigations and subsequent safety recommendations are designed to ensure that errors are never repeated.

### 3. EMPOWERS PEOPLE

Modern management encourages subordinates to challenge their superiors, but this has limits. It is natural for employees to be concerned about how they are perceived because of their superiors' power to decide their remuneration, promotion prospects, and the continuation or termination of their employment. This tension explains why whistleblowing is a particularly valuable method of feedback. It allows subordinates to speak up without fear of repercussions or having to fully justify everything they say. Whistleblowers can challenge their seniors and experts if they sense something is wrong, even if they have less knowledge or information.

#### **Permission to speak**

The emergency services and the military operate on the basis of particularly rigid hierarchies. However, this is balanced with an ability for subordinates to speak up in life or death situations. Oversight of the care for vulnerable children and adults is dependent upon whistleblowing.

Companies' investment in employees will be wasted unless the importance of whistleblowing is acknowledged. Whistleblowing is an important complement to employee development, engagement and pastoral care. Whistleblowing plays an equal role in motivating and empowering employees, and in managing their stress levels.

#### 4. PROVIDES UNIQUE INSIGHTS

Whistleblowing provides a window on the business that would not exist in any other way. It is the equivalent of a doctor asking a patient to stick out their tongue.

Company boards may struggle to know whether significant year-on-year increases or decreases in the number of whistleblowing reports signal improvement or failure. A rise can be attributed to greater awareness or to a deterioration in management, and a decrease can similarly be interpreted as success or failure. Whistleblowing does not tend to lend itself to a binary approach. In fact, boards face similar challenges in how to interpret information about other areas. For example, some companies with high employee turnover celebrate their investment in people and the growth of their network and influence, while other companies turn inward to mourn the losses and panic that they may be unable to attract fresh talent. What is important is the debate, not necessarily whether clear conclusions are reached.

##### Difficult conversations

Mandatory publication of gender pay gaps has prompted new and profound discussions about distribution of wealth, division of power and the future of work. Publication of ratios which compare CEO pay with the pay of others at the same company and comparisons between different ethnic groups are adding new perspectives and depth to this conversation.

#### 5. SIGNALS EXCELLENCE

Generation Y takes a different attitude to work compared with their parents or grandparents and questions the status quo. The egalitarian nature of whistleblowing is appealing.

A positive approach to whistleblowing will inspire confidence in employees, customers, suppliers and regulators. Sophisticated job applicants, aspiring directors and others may ask companies if they are confident that their approach to whistleblowing is sound.

##### 360°

Protect (formerly Public Concern at Work) offers companies a framework for assessing their whistleblowing arrangements. A comparison is made with similar companies in terms of sector, size and country or countries of operation. The assessment is broken down into three segments: staff engagement, effective operations and governance. Importantly, the number of whistleblowing reports does not influence scores. What lies behind the number is more important.

# *Action plan for boards*

## 1. OVERCOME RESISTANCE

Children are taught that loyalty, self-reliance, obedience and respect are prized character traits. Lessons, sports and other activities are often structured around team-work. Parents, schools and youth organisations use these messages to condition youngsters and prepare them for a lifetime of active citizenship. Transgressions of this implicit code of honour are punished, eg, playground snitches are ostracised and nobody wants to be friends with the teacher's pet.

### **Telling tales out of school**

This folklore dates back to the 16th century. It is a warning not to betray secrets to a teacher after class, or to let drop at home things heard from schoolmates. However, children receive mixed messages. Although they are encouraged to tell on predatory behaviour by adults, whether they should tell on other children isn't as straightforward. The parents of large families may encourage their children to tell on siblings, but opinions vary as to whether it is right to tell tales in the outside world and into adulthood.

Integrity and loyalty are attractive to companies who need responsible employees who will show-up and deliver. However, whistleblowing turns conventional ethical values on their head. The disloyalty and secrecy which surrounds whistleblowing creates moral hazards for whistleblowers, those they accuse and the companies that they both work for.

It is virtually impossible to change individuals' core values which have been learned and consolidated over a lifetime. A better approach is to explain why whistleblowing is consistent with core values, eg, loyalty takes many forms, bravery is preferable to irrational fear and maturity requires honesty. Fears can often be overcome by the realisation that whistleblowers' identities will never be known unless they decide to go on-the-record, just as charitable donors can stay anonymous if they prefer. The genie can stay in the bottle.

## 2. MEAN BUSINESS

Although companies value their employees' passion and commitment to the company and brand, these emotions can endanger whistleblowing. The certainty provided by a clear process should encourage the recipients of reports to treat whistleblowers with dignity and respect, and discourage empathy or outrage. If the company offers whistleblowers support services, then this must be a parallel but separate process.

Playing any role in whistleblowing reports provides those individuals with a valuable opportunity to demonstrate their professionalism. Whistleblowers have a chance to demonstrate how responsible they are; investigators can ensure fair play; subjects of whistleblowing reports can stay calm and act rationally; and boards have an opportunity to show maturity through their willingness to learn.

**The big day**

Day-to-day life is punctuated by significant life-changing events marked by civil or religious ceremonies, eg, graduations, weddings and funerals. Structure, clarity of individuals' roles and special norms of behaviour are what give these ceremonies their unique tone.

Court hearings are a form of ceremony. Roles and seniority are made apparent by individuals' clothing, and by the layout of courtrooms. Hearings are structured by the strict sequencing of events. The atmosphere is intended to be dignified not emotional. The administration of justice requires lawyers to be able to make their arguments without fear of interruption.

Companies are used to holding their own ceremonies for serious occasions. Most hold an annual general meeting which outsiders can attend. Again, roles are defined through room layout and sequencing of events.

**3. BE PREPARED**

Preparation starts with a written policy, raising awareness and ensuring that the right resources are in place.

A good policy begins with definitions and every company must find its own optimum balance between prescription, clarity and flexibility. Even the question of what is whistleblowing can mean different things to different people. Companies should think carefully about whether to follow legal or regulatory definitions or whether to devise their own definitions. A written procedure detailing how to blow the whistle should include a definition and outline the subsequent process.

It must be made clear that whistleblowing runs on a special and separate track. Informal day-to-day communications with line managers or openly challenging senior managers must not be mistaken for whistleblowing. The ability for whistleblowers to report on-the-record, confidentially or anonymously are a differentiating feature.

**Difficult issues for boards**

Who can report: employees are a key group, but boards need to consider the potential for whistleblowing by suppliers, non-executive directors and ex-spouses.

What can be reported: the extent of legitimate interest in employees' personal lives, and a comparison with what is a grievance.

Anonymity and confidentiality: whether both can be guaranteed regardless of the nature of the allegation or investigation, particularly in small companies.

Method of reporting: whether a third party supplier will be used for the receipt or investigation of whistleblowing reports.

Investigations: techniques may include interviewing witnesses, surveillance or entrapment. It may not be possible to provide a definitive timetable for investigations, but there must be oversight which ensures that crucial decisions are never made by a single investigator in isolation, eg, the decisions around remedial action and whether to give a whistleblower feedback.

Remedial action: how and when action will be taken, taking into account matters such as how to investigate without revealing the whistleblower's identity.

Feedback to whistleblowers: although feedback cannot be guaranteed, there should be a presumption that whistleblowers will be advised of the outcome of their report unless there is a good reason for this information to be withheld.

Other reporting: policies must not mislead about any ability or duty which employees have to report to other organisations, and companies with 'speak up' policies must differentiate those policies from formal whistleblowing.

Behaviours: how to encourage professionalism including whether victimisation of whistleblowers should lead to disciplinary action or bonuses being withheld.

Rights of accused: although the whistleblower may be anonymous, as far as possible, natural justice should be respected, eg, through independent corroboration, a right of reply and confidentiality of the process.

Whistleblowing creates a host of dilemmas for companies. It requires companies to reach decisions that are bound to be uncomfortable.

#### The 'perp walk'

US law enforcement's practice is to walk a suspected perpetrator through a public place, typically in handcuffs or a prison uniform. The media are then tipped-off so that they can film this spectacle. The intention is to reassure the public, but critics argue that the 'perp walk' rebuts the presumption of innocence.

## 4. ALIGN INCENTIVES

It may not be possible to match the benefits of whistleblowing for companies with benefits of whistleblowing for whistleblowers. However, it is possible for companies to address potential whistleblowers' major disincentive: the fear of victimisation, and allied to that, the fear that their identity could be revealed.

#### Nudge

Nudge is a way of presenting choices which influences behaviour without forbidding options or significantly changing economic incentives. Nudges are encouragements not mandates. Putting fruit at eye-level in shops is a nudge, but banning junk food is not. Nudges can be just as powerful as incentives or bans.

The power of nudge demonstrates how suggestible we are. For example, we are less likely to eat dessert if our dinner companion chooses not to.

Companies nudge their employees when they design their floorplans and the layout of the paperwork associated with retirement or health care plans.

In financial services and the National Health Service there are specific roles for individuals who have responsibility for overseeing the proper treatment of whistleblowers.



Encouraging whistleblowers with positive incentives can be more challenging but not impossible. There is value in reminding potential whistleblowers of the personal satisfaction of knowing that they have done the right thing. Extra holiday or a thank you letter from the chairman can go a long way.

Companies may want to think about the advantages and disadvantages of making whistleblowing compulsory. This eliminates the stress associated with deciding whether or not to blow the whistle. It is harder to justify bad treatment of a colleague if they were just following the rules.

Companies may also wish to consider offering whistleblowers financial rewards. The outcome will almost certainly be a dramatic rise in the number of whistleblowing reports. This could be a nice problem to have, but payment also carries a significant risk of false or exaggerated reports. Furthermore, if the criteria for payment are not clear, whistleblowers may try to improve their chances of receiving a payment by conducting their own investigation or collating evidence. Any contractual right to payment may also put the company at risk of legal action. From a broader perspective, payment may also perpetuate negative stereotypes of whistleblowers as self-serving rather than altruistic.

#### **SEC Whistleblowers' Program**

The Office of the Whistleblowers' Program ('the office') provides monetary awards to individuals who come forward with high-quality original information that leads to an SEC sanction of \$1m or more. The range of awards is 10%-30% of the money collected. The program is designed to encourage the reporting of violations such as accounting fraud, insider trading, market-manipulation schemes, false or misleading disclosures in SEC filings or earnings calls, or the bribery of foreign government officials. Whistleblowing reports can be made to the office anonymously providing the whistleblowing is legally represented. The program has its supporters, but its critics argue that it has led to exaggerated reports, and that reports are delayed until enough evidence has been collated to achieve the maximum monetary award.

## **5. KEEP AT IT**

Companies will need determination and persistence to succeed, and ironically whistleblowers and their supporters need the same qualities.

#### **Diversity**

Until fairly recently boardrooms were occupied entirely by white men who came from similar social and educational backgrounds. This was accepted by those inside and outside of boardrooms. Real change to board composition may take generations, and there are varying opinions about how to get there. However, what is important is that a desire for diverse boardrooms has shifted from an eccentric argument into a collective goal.

Sadly, deficiencies in the safeguarding of vulnerable adults and children have only come to light because of whistleblowing by insiders, and even those who generally feel animosity towards whistleblowers struggle to criticise this group. Companies may also welcome whistleblowing which prevents financial loss or increases profits. This positivity needs to be extended so that all legitimate whistleblowers are respected.

## *Conclusion*

When things go badly wrong there is little sympathy with the argument that company directors only operate at a strategic and high level. Directors do not want to be described as 'asleep on the job'. Although directors cannot know all the operational details of the companies they lead, it is reasonable for them to want reassurance that there is a process which allows problems to be surfaced and dealt with. This is why it is in directors' and senior managers' own interests for whistleblowing to be effective.

Companies should distance themselves from the exaggeration and repetition of horror stories about the treatment of whistleblowers. These stories only rationalise the instinctive response to look the other way and stay quiet. Companies must be more balanced in their approach to whistleblowing.

### **Mixed reports**

Journalists revel in portraying the decision to blow the whistle as life-changing with dire consequences for the whistleblower's personal and professional reputation, coupled with the risk of financial hardship through unemployment.

At the same time, there is heavy criticism of those who victimise whistleblowers. In one way this is positive because it consolidates opinions about what constitutes unacceptable treatment of whistleblowers. However, it also increases whistleblowers' and potential whistleblowers' fear of victimisation.

The media's comparison of whistleblowing with witch-hunts is ironic given that investigative journalists rely upon whistleblowers. Without the bravery of whistleblowers, grand corruption, organised crime and humanitarian atrocities would go unreported. The victims of these tragedies would not have a voice and criminals would walk free. Although chequebook journalism seems dangerous, in some circumstances it is a pragmatic solution which is justified by what is at stake.

There are over 1.8m chartered accountants and students around the world – talented, ethical and committed professionals who use their expertise to ensure we have a successful and sustainable future.

Over 180,000 of these are ICAEW Chartered Accountants and students. We train, develop and support each one of them so that they have the knowledge and values to help build local and global economies that are sustainable, accountable and fair.

We've been at the heart of the accountancy profession since we were founded in 1880 to ensure trust in business. We share our knowledge and insight with governments, regulators and business leaders worldwide as we believe accountancy is a force for positive economic change across the world.

[www.charteredaccountantsworldwide.com](http://www.charteredaccountantsworldwide.com)  
[www.globalaccountingalliance.com](http://www.globalaccountingalliance.com)

## ICAEW

Chartered Accountants' Hall  
Moorgate Place  
London  
EC2R 6EA  
UK

T +44 (0)20 7920 8100

E [generalenquiries@icaew.com](mailto:generalenquiries@icaew.com)  
[icaew.com](http://icaew.com)

