



Whistleblowing

A tick in the compliance box or a vital source of business intelligence?



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Building a better
working world

Whistleblowing is widely recognised as one of the most effective methods for the detection of fraud, bribery and corruption. Reports published in 2014 by the Association of Certified Fraud Examiners and the OECD found that 42% of frauds and 19% of incidences of foreign bribery were uncovered as a result of a whistleblower.^{1,2}

Whilst historically the whistleblower has often been viewed with distrust and hostility in the UK, we are now witnessing a steady shift in cultural attitudes with whistleblowing increasingly being recognised as an essential element of an effective compliance regime.

However, whistleblowing arrangements should not be viewed solely in compliance or regulatory terms. As integrity plays an increasingly prominent role within the corporate world, we see many companies, employees and customers choosing to shun organisations which fail to demonstrate strong ethical values.

For organisations seeking to demonstrate commitment to their values, a well implemented whistleblowing framework is a vital source of internal intelligence, providing senior executives with enhanced visibility of activity within their business. As well as exposing crimes or regulatory infractions, whistleblowing can also help identify areas of disfunctionality where teams or individuals are operating against the organisation's ethical values or outside of its risk tolerance.

“Whistleblowing is an essential element of an effective compliance and audit regime”

Andrew Tyrie MP
Chairman of the Parliamentary
Commission on Banking Standards³

An effective whistleblowing framework is more than just a telephone line

When staff have something to report, they need to believe that the organisation will listen, that what they say will be taken seriously and that they will not suffer retaliation. A 2015 survey by the Institute of Business Ethics⁴ found that 45% of UK employees questioned did not raise their concerns, citing fear of losing their job as the primary reason.

If those with something to report do not have an effective internal means to raise their concerns their options are to do nothing, or to report it to a third party – typically law enforcement, a regulator or the media. Indeed, in 2015 the Financial Conduct Authority (FCA) disclosed that it received 1,376 whistleblowing disclosures in the previous year; a five-fold increase since 2009.⁵

Our experience is that senior management within firms sometimes think they have done enough to encourage and enable staff to report their concerns without fear of recrimination. This is often not the case with staff unclear on how, when and what type of issues to report.

Best practice in whistleblowing

Robust and holistic whistleblowing arrangements should include:



A whistleblowing framework



A well-structured and practical response and escalation plan



Multi-channel reporting platform



Awareness among management and employees that includes training in the requisite processes

The new FCA/PRA whistleblowing rules

In June 2013, the UK Parliamentary Commission on Banking Standards published a report entitled 'Changing Banking for Good' which stated that "the [UK] financial sector must undergo a significant shift in cultural attitudes towards whistleblowing".⁶ Following this report, in October 2015, the FCA, and the Prudential Regulation Authority (PRA), published new rules relating to whistleblowing which take full effect in September 2016.

Whilst the intention is to encourage a culture where individuals feel able to raise concerns and challenge poor practice and behaviour, the rules will have significant implications for affected firms that will be required to:

1. Appoint a Senior Manager as their whistleblowers' champion
2. Put in place internal whistleblowing arrangements able to handle all types of disclosure from all types of person
3. Put text in settlement agreements explaining that nothing prevents staff from making a protected disclosure
4. Tell UK-based employees about the FCA and PRA whistleblowing services
5. Present a report on whistleblowing to the Board at least annually
6. Inform the FCA if it loses an employment tribunal with a whistleblower
7. Require its appointed representatives and tied agents to tell their UK-based employees about the FCA/PRA whistleblowing service

These new regulations will initially only apply to deposit-takers (e.g. banks, building societies, credit unions) with over £250m in assets, and to insurers subject to the Solvency II directive. However, many organisations are viewing the FCA/PRA rules as non-binding guidance for them to benchmark their whistleblowing procedures, irrespective of their sector.

Are your whistleblowing procedures adequate?

When considering the adequacy of their organisation's whistleblowing procedures, executives should consider the following questions:

	Does your organisation have a whistleblowers' champion?
	Does the whistleblowers' champion fully understand those rules that pertain to the organisation (e.g. the FCA/PRA Rules)?
	If a member of your staff wanted to raise a concern would they know what to do?
	Will that member of staff be confident that having done so they would be free from any form of reprisal?
	Would your managers know how to respond if a concern was reported to them?
	Would your managers know how to afford protection to a whistleblower?
	Do your employees and managers understand the difference between a concern and a grievance?
	Is your whistleblowing framework capable of dealing with any form of disclosure, from any person?
	Are you able to produce accurate records of all reported whistleblowing incidents?
	Do you have a plan to deal with serious issues when they are raised by a whistleblower?
	Do you have a range of communication options that allow staff to raise concerns?

How can EY assist with your whistleblowing arrangements?

Your need 	Your questions 	Our approach 	Our help 
 <p>Establishing a whistleblowing framework</p>	<ul style="list-style-type: none"> ▶ What does a good whistleblowing framework look like? ▶ What should our policy contain? ▶ Which department should own whistleblowing? ▶ Should our whistleblowing platform be outsourced? ▶ What are the protocols that can be implemented for escalation and response action? 	<ul style="list-style-type: none"> ▶ Use of cross-sector experience to assist with identification and implementation of leading practice 	<ul style="list-style-type: none"> ▶ Assistance with development of whistleblowing policy ▶ Assistance with selection of a suitable whistleblowing platform ▶ Assistance with development of response and escalation procedures
 <p>Reviewing existing policy or mechanism</p>	<ul style="list-style-type: none"> ▶ How do we assess that our existing policy and mechanism is effective? ▶ How do we resolve challenges related to effective response action, including investigations, disciplinary action and remediation? ▶ How do we assess that excessive time is not spent by the executives (managerial) team on such activities? 	<ul style="list-style-type: none"> ▶ Provision of current state assessment and recommendations for target operating model 	<ul style="list-style-type: none"> ▶ Conduct diagnostic review of existing policy and procedures ▶ Review of data related to complaints received, response actions and remediation measures ▶ Identification of potential areas of improvement ▶ Recommendations for changes in line with industry practices and needs
 <p>Dealing with concerns</p>	<ul style="list-style-type: none"> ▶ What action should be initiated if a complaint is made? 	<ul style="list-style-type: none"> ▶ Support for triaging and investigations 	<ul style="list-style-type: none"> ▶ Providing advice on how to create an effective response plan, including scope and timelines
 <p>Training and awareness</p>	<ul style="list-style-type: none"> ▶ How do we train or support the whistleblowing champion and/or senior management ▶ How can we efficiently create awareness and train our staff? 	<ul style="list-style-type: none"> ▶ Conducting training and awareness sessions 	<ul style="list-style-type: none"> ▶ Assisting in preparation of roll-out strategy ▶ Providing assistance in conceptualisation and development of training content for face-to-face and web-based training ▶ Delivering training, either to train trainers or the target audience
 <p>Assistance with internal and external reporting</p>	<ul style="list-style-type: none"> ▶ What should our annual report to the FCA/PRA contain? ▶ What management information does our whistleblowers' champion require? ▶ What reporting will our Board need regarding whistleblowing? 	<ul style="list-style-type: none"> ▶ Support for development of annual whistleblowing report ▶ Support for production of internal management information 	<ul style="list-style-type: none"> ▶ Review reporting to the audit committee, board or regulatory body ▶ Reviewing existing mechanism for the existence, adequacy and functioning of the mechanism ▶ Reviewing sample cases reported through the mechanism ▶ Conducting surveys to assess whether employees feel victimised ▶ Conducting interviews of management and employees independently ▶ Support for production of management dashboards and internal reporting

References

- 1 Association of Certified Fraud Examiners, 2014 Global Fraud Survey Source: <http://www.acfe.com/rtnn/docs/2014-report-to-nations.pdf>
- 2 OECD An Analysis of the Crime of Bribery of Foreign Public Officials, 2014, Source <http://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm>
- 3 A Letter to Financial Times: Encouraging the whistleblowers by Andrew Tyrie MP Source: <http://on.ft.com/173sqAc>
- 4 IBE Ethics at Work – 2015 Survey of Employees Source: http://www.ibe.org.uk/userassets/publicationdownloads/ibe_survey_eaw15_britain.pdf
- 5 FCA: How we handle disclosures Source: <http://www.fca.org.uk/static/documents/how-we-handle-disclosures-from-whistleblowers.pdf>
- 6 Parliamentary Commission on Banking Standards Final Report - 'Changing banking for good' Source: <http://www.parliament.uk/documents/banking-commission/Banking-final-report-volume-i.pdf>

Why EY?

To help build a better working world, EY's ambition is to help our clients to have confidence that their organisation is trusted, complying with relevant laws and regulations and following internal processes – avoiding the negative consequences arising from compliance failures, whilst getting the clear benefits of growth, value and stakeholder engagement.

Finding people with the skill and experience to implement and manage an effective whistleblowing framework is not easy. EY's Fraud Investigation & Dispute Services team has wide experience of whistleblowing in all its forms, coupled with our global reach and a deep understanding of the commercial impact of whistleblowing, we can help our clients in the review, implementation and improvement of their whistleblowing framework, making it truly effective.

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Dealing with complex issues of fraud, regulatory compliance and business disputes can detract from efforts to succeed. Better management of fraud risk and compliance exposure is a critical business priority – no matter what the industry sector is. With over 4,500 fraud investigation and dispute professionals around the world, we can assemble the right multidisciplinary and culturally aligned team to work with you and your legal advisors. We work to give you the benefit of our broad sector experience, our deep subject matter knowledge and the latest insights from our work worldwide.

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