

WHISTLEBLOWING: WHAT TO DO ABOUT IT IN YOUR ORGANISATION



CMP RESOLUTIONS

INVESTIGATION EXPERTS SINCE 1989



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INTRODUCTION

An open culture where issues can be raised constructively and dealt with promptly is the culture to aim for. Achieve this, and you minimise other negative consequences of whistleblowing: anonymous leaks; bad publicity; costs and compensation; lengthy investigations; litigation; and regulatory inspections.

The benefits of implementing a culture in favour of people taking responsibility, having difficult conversations, and using the whistleblowing process, are many: critical information reaches key people; appropriate action can be taken; problems are rectified early; your reputation with staff and stakeholders (including regulators and the courts) remains positive.

It is expensive to get whistleblowing wrong. In 2010, the average award under the Public Interest Disclosure Act 1998 (PIDA) was £58,000, compared to the average awards of £18,584 (race), £19,499 (sex) and £52,087 (disability) discrimination cases. And the loss of public confidence in your organisation is incalculable.

While Sir Robert Francis, Chair of the 'Freedom to Speak Up' Review, set out principles and actions focused on the NHS, whistleblowing is not a matter only for the NHS and the public sector - it affects all employers. Of claims to PIDA in 2010, 68% were from the private sector; 26% from the public sector; and 4% from the voluntary sector.

The landscape is changing fast. In February 2015, Sir Robert Francis QC published his final report following the Freedom to Speak Up review, which looked at the culture for raising concerns in the NHS. In March 2015 the PRA and FCA published a [joint consultation paper](#) recommending a series of measures to formalise whistleblowing procedures in the financial sector, which will apply to UK banks, building societies and credit unions; and PRA designated investment firms and insurers.

This paper outlines action you can and should take now.



HIGH-LEVEL ACTIONS

UPDATE YOUR WHISTLEBLOWER POLICIES

It does not matter what your policy is called but your employees do need to be able to rely upon it. Employee contracts and codes of conduct should be explicit about the duty to report wrongdoing (whistleblow) and the circumstances that they would be expected to do so. Your policies should also be specific about the use of confidentiality clauses and settlement agreements.

LEADERSHIP

Senior management visibly demonstrating a strong commitment to and support for an open culture, including the whistleblower policy and protection, will help to embed it firmly within the organisation.

Responsibility and accountability for the policy and procedures should sit with the executive team, and not with the HR function.

APPOINT AND TRAIN A WHISTLEBLOWER GUARDIAN

Although recommended by Francis for the NHS, it is good practice for all large employers to nominate a champion or guardian who has lead responsibility for the whistleblowing process and for dealing with the issues raised. They must have the authority and autonomy to report to the Chief Executive on the issue of the concerns raised.

The guardian should oversee and regularly review the whole whistleblowing process. They must ensure that the policies are robust; staff are listened to and supported; managers are trained; issues are dealt with promptly and effectively; learning is fed back to the business and actually applied; and the whole process monitored and reviewed for areas of improvement.

BREAK DOWN CORPORATE SILOS

HR, legal and compliance functions must work closely together to ensure a fully informed and comprehensive approach is taken to all aspects of the whistleblowing response process.

A united approach should overcome many of the problems shown up time and time again by cases brought under PIDA - employment retaliation issues, performance management, discipline, investigations and critical compliance issues.



CULTURE OF TRANSPARENCY AND OPENNESS

Create a culture of culture of openness and transparency throughout your organisation. Don't wait until someone can 'take it no longer' and turns to someone outside your organisation!

Make it part of everyday practice to enable the informal resolution of concerns; encourage people to speak out in team meetings, at one to ones, and staff briefings.

OPERATIONAL ACTIONS

TRAIN MANAGERS

Conduct whistleblower training for managers. In 43% of cases whistleblower complaints are raised directly to managers and the responses of those managers vary hugely. This creates a potential risk for your organisation.

Managers need specific training (updated on a regular basis) to ensure that they respond appropriately to any concerns raised to them. They are dealing with a delicate situation which requires a blend of process and soft skills, and the training should reflect this. Managers should feel confident and able to handle the whistleblowing issue confidently; including dealing with the individual's concerns about potential repercussions to them personally from raising/whistleblowing an issue. Managers have a personal accountability to prevent bullying or other repercussions from arising.

CONDUCT A THOROUGH INVESTIGATION

Developing a 'rapid response system' to address the concerns raised is key and will often include instructing skilled and trained investigators to conduct an investigation quickly.

Some organisations experience pain and cost later on because this part of the process has not been handled effectively.

GIVE STAFF ACCESS TO SUPPORT

Taking the decision to speak out is significant for the whistleblower and can feel risky and confusing. So encourage them to act, by providing support mechanisms, which may already exist in your organisation: mediation, counselling; coaching and mentoring. Staff who access support while going through a whistle-blowing process



may be better able to return to their original position, transfer, or leave the organisation as painlessly as possible, if this is the mutually agreed approach.

ONGOING ENGAGEMENT

Building an open culture is not a one-off 'project' but takes time and ongoing work. So take opportunities with training and company communication to reinforce the policy and the process, and reiterate the importance of staff raising concerns. Remind people how to raise a concern and with whom; and where to go to seek advice and support. Carry out specific (annual) events which focus upon the need for transparency, accountability, and ethical and lawful conduct. Outside speakers, training sessions, focus groups, sessions around core values, can be used to reinforce the open culture.

EMPLOYEE ATTITUDES

The Francis Report emphasises the need for a culture of safety and learning where everyone feels safe to raise concerns and where these conversations take place as part of normal everyday practice. So find out what your employees believe about whistleblowing and the attendant risks, in your organisation? What stops them from raising concerns?

REVIEWING AND REPORTING ACTIONS



REPORTING

The key to building staff confidence in your system, and in encouraging people to speak up, is to report openly on responses to concerns. Demonstrate that you are committed to protecting whistleblowers and that you take their concerns seriously.

The minimum standard is to provide specific feedback to the individual who raised the concern about any action taken, and why. A wider and more positive approach is to include whistleblowing concerns in other company wide communications. Generalise the information; give the nature of the concern, some details regarding the investigation, the speed with which the matter was resolved, the learning that resulted, and the actions taken.

REVIEWING

Review your policy and practices and assess their effectiveness. Record and analyse:

-  The number and types of concerns raised
-  The outcomes of the investigations



- 🏆 Feedback from individuals who have used the process
- 🏆 Any complaints of victimisation
- 🏆 Any complaints of failures to maintain confidentiality
- 🏆 Review of other (existing) reporting mechanisms such as, fraud, serious incident reporting, health and safety
- 🏆 Review of other adverse incidents which could have been identified by staff, such as consumer complaints, publicity, wrong doing identified by third parties.
- 🏆 Review any relevant litigation
- 🏆 Review of staff awareness, trust and confidence in the scheme.

FOLLOW-UP DATA ON WHISTLEBLOWERS

The performance of whistleblowers should be followed up by an HR professional or supervisor, who needs to be someone who is unaware of the whistleblowers report. Using objective metrics where possible, follow-up their performance evaluations to ensure that they are not subject to retribution.

CONCLUSION

The actions you can take, following the Francis Report 'Freedom to speak up', can be divided into three groups:

1. High-level
2. Operational
3. Review and reporting

The momentum for action on implementing whistleblowing systems and embedding an open culture is gathering pace. The Francis Report, and the PRA and FCA joint consultation, are just two high-profile examples.

Implementing the necessary changes means creating an open culture, and widespread responsibility for good practice. This will lead to no, or fewer, claims under PIDA - and more energy and activity for developing the performance of your business.

ABOUT CMP RESOLUTIONS

We work with organisations to Close, Manage and Prevent conflict at work. We support organisations in their whistleblowing responsibilities by:



- Supporting leaders to deliver cultural change
- Training Whistleblower Guardians
- Training investigators
- Improving your internal investigatory practices.
- Providing external investigators for whistleblowing concerns

I don't know how I've been doing my job for the past year without the training

ABERTAWA BRO MORGANYG UNIVERSITY HEALTHBOARD

We have used CMP Resolutions to help us handle very complex, highly sensitive investigations. We have been impressed by their speed of response, the professionalism of their people, not only their mediators and investigators but also their back office and logistics. Most importantly the outcomes of their work have enabled us to resolve our issues successfully. Would we use them again? Without question. They are our "go-to" solution.

STATES OF JERSEY

**FOR MORE INFORMATION ON HOW CMP RESOLUTIONS MIGHT
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