



# SPEAKING UP FOR THE WHISTLEBLOWER

Society needs whistleblowers and organisations should be helping them step forward *by Marianna Fotaki*

In May 2018, Jns Staley, CEO of Barclays, the multinational investment bank and financial services firm, was fined by the Financial Conduct Authority and Prudential Regulation Authority for actions that risked undermining confidence in the company's whistleblowing procedures.

His behaviour fell short of 'the standard of due skill, care and diligence expected'. He also repaid a substantial part of his bonus, while Barclays was required to provide details of its whistleblowing procedures to regulators on an annual basis.

The incident showed that, despite measures taken by regulators in recent years, and the procedures adopted by organisations, implementing effective speak-up procedures remains a challenge for many organisations.

Over the last five years, together with research colleagues Kate Kenny and Wim Vandekerckhove, I have researched whistleblowing, studying its benefits, the plight of whistleblowers, the efficacy of speak-up processes and much more.

We have developed evidence-based guidelines and recommendations that senior managers, HR professionals, and compliance officers can use to design and implement effective speak-up arrangements.

## The benefits of speaking-up

Whistleblowing is encouraged and protected in many jurisdictions because it is considered to be beneficial for organisations and society. Without protection, the fate of the whistleblower is, all too frequently, to be actively silenced, discouraged and vilified, suffering economically and ill-health. Whistleblowers, in the main, are not narcissistic attention-seekers, betraying their colleagues. Instead, our research shows that they tend to be people who have a regulatory obligation to report, or feel a strong duty to the norms of their profession.

They act out of a desire to stop wrongdoing and prevent it from recurring. And they do so, often, with great concern about whether their actions will harm their colleagues, or the image of the organisation that they want to protect.

As for organisations, they should not fear whistleblowers. There are many incentives for setting up robust whistleblowing procedures. For example, raising concerns helps to identify wrongdoing in organisations, something they seem to find difficult, even when wrongdoing is systemic. Nor is it strange for organisations to signal that turning a blind eye to wrongdoing is appropriate behaviour. Tolerance of organisational wrongdoing and cover-ups can even translate into a mistrust of democratic and other important institutions.

And, if trouble is stored up over time, when wrongdoing finally comes to light the damage is often far greater than if it had been detected earlier. It can result in financial damage and falling share price, in addition to the costs of fixing the problem. Research shows that 40 per cent of 5,000 firms studied had suffered from serious economic crimes resulting

in an average of more than \$3 million each in losses. While the 2017–2018 Global Fraud and Risk Report by global risk consultants, Kroll, shows that insiders were the main perpetrators of fraud and whistleblowers, rather than internal audit or management, were the most effective means of uncovering fraud, exposing 47 per cent of fraud incidents.

Adopting robust procedures can help organisations avoid the reputational damage that accompanies a situation where a whistleblower feels compelled to take a matter public.

It should also reduce the prospects of the whistleblower suffering damaging repercussions.

Some might argue that sufficient legislation and regulations are in place to protect whistleblowers in many countries. But evidence, including our own observations, suggests that legislation is failing to protect whistleblowers adequately and is not being translated into appropriate practices within organisations.

The barriers to adequate protection of whistleblowers are many. Senior managers complicit in or at least indifferent to wrongdoing, toxic organisational cultures, visibly poor treatment of whistleblowers, a lack of action or change after raising concerns – these are all deterrents to speaking up.

Organisations need to go beyond paying lip service to the notion of enabling and protecting whistleblowing and implement genuinely effective speaking up arrangements. In our paper *Designing and Implementing Effective Speak-up Arrangements* we set out 12 recommendations to help organisations do this. It is worth highlighting some of the key themes that underpin our recommendations.

## Channels and access

It is important to provide easy access to speak-up arrangements. In practice, this means providing a range of different channels because trust in the process, built through familiarity and positive experiences, is likely to lead to changes in the channels that are used the most. These channels include, and this is not exhaustive, informal channels, email and web applications, internal and external hotlines, and independent external advice.

It is also important to make allowances for cultural factors. Our research suggests that culture affects the channels that employees prefer to use to voice concerns. For example, employees in the UK, US and Latin America were less willing to use an external ombudsman to raise concerns than employees in Germany, the Middle East, and Asian countries. Firms that ignore cultural differences, that try to standardise speak-up arrangements across territories, risk making the process more difficult to access for many employees. Another example of how firms can enable access to speak-up arrangements is by providing channels in multiple languages – at least in the local languages spoken by employees.

## Responsiveness and feedback

Effective speak-up arrangements ensure that concerns are responded to in a timely and effective manner, where possible. Responsive speak-up arrangements build confidence and encourage more use by employees.

A responsive system is one that is well organised, clearly mandated, and adequately resourced. A good example of the kinds of problems that arise is the early dismissal of issues as grievances and more appropriate for HR to deal with.

However, what initially appear to be grievances may, on more thorough investigation, lead to details about serious wrongdoing. It is important, therefore, for organisations to be prepared to identify and respond to both grievance and wrongdoing related concerns.

Equally, organisations must be capable of dealing with an increase in the volume of concerns raised. That might be due to examples of whistleblowing and wrongdoing being publicised in the media, or changes in attitude towards certain types of behaviour in society such as less tolerance of wrongdoing and increased transparency thanks to social media and the internet.

Organisations should also be aware of possible barriers to responsiveness. Perceptions around responsiveness are especially important. For example, there may be legal



limitations to what can be communicated but organisations can take steps to manage expectations by explaining about legalities and providing indicative timescales for follow-up activities.

It may be difficult for organisations to be seen to be responding. Responses, such as sanctions taken against individuals, may lack visibility for a variety of reasons. Here, companies can create a generalised perception of a responsive organisation. They might, for example, where the matter is not a compliance issue, try to include the person who raised the concern in efforts to devise a solution. Organisations need to continuously stress to managers that responding to concerns is part of their role.

Providing this information in annual reports will demonstrate the company's responsiveness in dealing with concerns raised and commitment to protecting those who raise them.

## Trust and transparency

There are several ways that organisations can help create the trust and transparency essential for effective speak-up arrangements. For example, including the HR function as well as compliance can encourage people to perceive speaking-up arrangements as being about well-being and engagement, not simply policing and compliance.

Even the act of implementing effective speak-up practices itself can build trust, or involving competent independent specialist speak-up operators and unions. Also, allowing employees who raise concerns to help develop solutions, where possible, can build trust.

Transparency, to the extent that it is possible without endangering the confidentiality and safety of whistleblowers, is also an essential aspect of building confidence. Actions that create transparency include recording speak-up events and including speak-up data in organisational reporting. Senior managers might, for example, publish aggregate numbers in the annual report and report performance against a best practice framework.

## Speak-up champions

The recommendations we make in our paper are a great start for organisations determined to implement good practices around speak-up arrangements. However, although necessary, these measures are not sufficient alone to embed good practices systematically.

In the same way that business accepted the need for good CSR practices, we need leaders to step forward as speak-up champions, to set and maintain standards; to evidence the evaluation and process of speaking up; to publicise the benefits of effective speak-up arrangements. And not just the obvious economic benefits, but also the benefits in terms of becoming a more attractive employer and building better stakeholder relationships, for example. Then, hopefully, other organisations will follow these pioneers.

Powerful signalling that policymakers and regulators understand the importance of whistleblowing and have the resolve necessary to encourage, enable and protect, the practice of speaking up will also help. This will help create a society fit for the 21st century. A society where we can be confident that the vast majority of organisations are not only good places to work, but institutions that we can be proud of.

## Further Reading:

Fotaki, M, Kenny, K, Vandekerckhove, W, Huronanto, L, J, and Kaye, D, O., 2012. Designing and Implementing Effective Speak-up Arrangements. [pdf] Available at: [wbs.ac.uk/kyb/speakup](http://wbs.ac.uk/kyb/speakup)  
Fotaki, M, Kenny, K, Vandekerckhove, W, Huronanto, L, J, and Kaye, D, O., 2016. Effective Speak-up Arrangements for Whistleblowers. *Association of Chartered Certified Accountants*. [pdf] Available at: [myukccaa.com/assets/Kenny\\_K\\_Vandekerckhove\\_W\\_andFotaki\\_M\\_2019\\_The\\_Whistleblowing\\_Guide\\_Speak-up\\_Arrangements\\_Challenges\\_and\\_Best\\_Practices](http://myukccaa.com/assets/Kenny_K_Vandekerckhove_W_andFotaki_M_2019_The_Whistleblowing_Guide_Speak-up_Arrangements_Challenges_and_Best_Practices) New Jersey, Wiley.



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