

‘Enhancing Whistleblower protection: It’s all about the Culture’

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1. Introduction

In April 2017, Barclays’ chief executive, Jes Staley, was put under investigation by the Financial Conduct Authority and the Bank of England for breaking their rules in relation to the treatment of whistleblowers. Jes Stanley apologised for attempting to uncover an informant’s identity and John McFarlane, Barclays’ Chairman, admitted that that he is personally disappointed that this situation does not fit with the bank’s culture and the integrity of its controls. This was another setback for Barclays after the reputational damage it suffered following its involvement in the Libor rigging scandal.

It is not the aim of this chapter to evaluate the ethical stance of Barclays or the conduct of its executives. However, this story brought to the surface again the issue of whistleblower protection, not so much in relation to the existence of whistleblowing procedures and policies in a company, but mainly about their integrity, independence and effectiveness in protecting whistleblowers from being victimised or retaliated against because they have disclosed concerns. Although in the case of Jes Staley and Barclays there was no harassment or blacklisting, because the whistleblower was not identified, it is the most recent one in a long list of cases involving attempts to silence, victimise or retaliate employees, who tried to follow the whistleblowing procedures. Michael Woodford, Cynthia Cooper, Sherron Watkins and Gary Walker are just a few of the whistleblowers, who were brave enough to step up and, instead of protection, they received contempt, prosecution and harassment.

It is worth mentioning that in many countries around the world there is a legislative framework that has been introduced to offer protection to whistleblowers and more and more companies seem to respond positively by introducing whistleblower channels and procedures,

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especially where such requirement is included in the Listing Rules of a country's stock exchange. At the same time, it needs to be examined whether these rules and initiatives are sufficient in actually safeguarding whistleblowers or encouraging employees to step up and blow the whistle. Although Serbia, Ireland and New Zealand have some enlightened statutory provisions, it cannot be argued that there is uniformity and consistency among these legal frameworks in terms of the type of protection offered, the oversight and enforcement mechanisms, and the implementation of internal procedures. As a result, there is a growing number of cases of retaliation, discrimination, and insufficient protection of whistleblowers, while we are far from the establishment of a set of minimum standards that would apply internationally. If potential whistleblowers do not feel that they will be adequately protected, they are not likely to blow the whistle, for fear of having the same treatment as the above - mentioned whistleblowers.

This chapter argues that, since law and policies do not provide a fully adequate answer to the problem of whistleblower protection, we need to reinforce these rules and policies and make them more focused on corporate culture. More specifically, whistleblower policies can contribute towards the creation of a culture of openness and honesty, as whistleblowing can be not only an instrument of good governance but also a manifestation of a more open culture (Committee on Standards in Public Life, 2005). Although improvements can and should be made to the existing regulatory framework, this framework needs to be benefitted from a culture that actively encourages the challenge of inappropriate behaviour at all levels. Embedding the right culture as well as the right processes is the key to achieving efficient whistleblower protection.

2. Whistleblowers and the Reality Check

Workers, including directors and members of the management team, feature at the heart of whistleblowing regulation, as they are usually the first to identify or to know when something is wrong within their company. Their access to information and their inside knowledge of their company renders them an extremely valuable asset not only for fraud and mismanagement reporting purposes, but also as an early warning and accountability mechanism (Miceli and Near, 1992; Berry, 2004). At the same time, the key for successfully tackling the problem of corporate mismanagement and corruption is the establishment of strong bonds and sufficient communication channels between employees and management. Encouragement and protection are the two main pillars upon which an efficient legal

framework should be based. Without clear arrangements which offer employees safe ways to raise a concern, it is difficult for a company to effectively manage the risks it faces. Unless employees have confidence in the arrangements, they are likely to stay silent where there is an issue that can negatively affect the company, its stakeholders or the wider public interest. Needless to say, such silence denies the company the opportunity to deal with a potentially serious problem before it causes real damage. The costs of such a missed opportunity can be great: fines, compensation, regulatory investigation, reputational damage, lost jobs, lost profits and even lost lives. (Brown et.al 2014; Vandekerckhove, 2016).

Since the 1970s, when the term was initially used by activist Ralph Nader as an alternative to derogatory terms, such as informant or snitch, numerous attempts have been made to provide a comprehensive definition of whistleblowing without great success. For the purposes of our discussion, a whistleblower is ‘a concerned citizen, totally or predominantly motivated by notions of public interest, who initiates of his or her own free will, an open disclosure about a significant wrongdoing directly perceived in a particular occupational role, to a person or agency capable of investigating the complaint and facilitating the correction of the wrongdoing’ (Australian Senate Select Committee, 1994). In essence, effectively encouraging employees to disclose any wrongdoing is a critical step for discovering fraud and corporate misconduct. Due to the complexity of uncovering a financial misconduct, inside information by low or mid-level employees of a company would be of valuable assistance. Indeed, employees have an information advantage over external gatekeepers because they have more far-reaching knowledge regarding the inner workings of a large corporation. Their position as ‘insiders’ in the company could be instrumental in solving the inherent information problems of external gatekeepers (Brickey, 2003).

As a result, whistleblowers are considered an effective source of feedback on managerial malpractices, which can bypass difficulties to communication that often exist in large companies and effectively provide essential information to persons that have the power to act (Callahan and Dworkin, 1992). Most of the time, blowing the whistle allows external monitors to request and get access to information about alleged misconduct and subsequently to involve the authorities (Call et.al., 2014). Although whistleblowing can be an effective system of internal monitoring and reporting based on employee-watchdogs, there are limitations. An employee’s right to freedom of speech and disclosure of information can be seen as part of their right to self-development and autonomy, but they should be careful not to breach their employer’s right to enjoy the trust and confidence of their employees (Barendt, 2007).

There is always a balancing act to be performed and, provided that there are considerations that make the disclosure necessary, such as the protection of public interest, these considerations tip the balance in favour of protecting whistleblowers. Of course, it can also be argued that fraud or internal irregularities are not directly related to the protection of public interest, but the impact of corporate scandals is rather far-reaching and affects different groups of citizens and the public as a whole, as history has shown in the cases of Enron, WorldCom, Parmalat and Lehman Brothers. It cannot be denied that there is public interest in effective management and the accountability of public affairs and private business (Markopolos, 2010). Whistleblowing goes far beyond the narrow boundaries of corruption, criminal activity and violations of the law or administrative regulations and can include information about abuse of authority, risks to health and safety, risk to the environment and cover up of waste of public funds or similar cases of gross mismanagement. Therefore, protection should be afforded to whistleblowers because their conduct contributes towards the protection of their colleagues as well as the public, the improvement of legislation and the proper functioning of a democratic society. The achievement of such goals presupposes a strong commitment to the encouragement and the protection of the legitimate interests of those who have courageously been willing to come forward with their concerns (Kohn et.al, 2004).

The design of a robust and efficient system of whistleblower regulation has been a real challenge for national legislators and there is lack of uniformity as to the methods employed, the choice of prevention techniques, motivation tools and enforcement mechanisms internationally. The three main areas which most of the legislative initiatives have in common and are arguably essential in the quest for an optimal model of regulation, are whistleblower protection from retaliation practices or unfair dismissal, encouragement of potential whistleblowers and finally the filtering and evaluation of whistleblower allegations.

Starting with the third area, it is an onerous task for the authorities to be able to identify credible whistleblowers and distinguish them from opportunistic ones. It cannot be expected that all individuals are responsible and non-opportunistic, but baseless or unsubstantiated reports can unfairly damage the reputation of innocent parties. It is important that emphasis is put on punishing frivolous and vexatious reporting, otherwise credible whistleblowers are likely to slip through the cracks, particularly given the limited resources available. Just as whistleblowers' actions may be complex, variably motivated, ambiguous and contested, so too can be the responses of those in authority (within and outside a company) when confronted with new information and there is a pressing demand for action.

Despite the difficulties in filtering and evaluating whistleblower credibility, the value of whistleblowing as a crime detection and accountability mechanism cannot be underestimated. According to the 2016 ACFE Global Fraud Study in 94.5% of the cases examined the perpetrator took some efforts to conceal the fraud (ACFE, 2016). Whistleblowers have enabled regulators in the US to successfully obtain additional judgments of more than \$22 billion more than would have been obtained without their assistance, while the total amount of penalties imposed within the period from 1978 to 2016 exceeds \$85 billion (Call et. al., 2014; SEC, 2016). In addition, tips were found to be the most common detection method by a wide margin, accounting for 39.1% of cases (43,3% in 2014), as opposed to outside monitors (ACFE, 2016). Being part of the company and having easier access to insider information is a determining factor for the exposure of cases of misconduct, as there is a 15% higher likelihood that corporate financial misconduct comes to light when employees are the ones who blow the whistle (Dyck et.al, 2010).

Externals, such as auditors, regulators or institutional investors, closely monitor the company's performance and behaviour, but the growing complexity of modern corporations in combination with the limited and restricted access of publicly available information can make it difficult for stakeholders to identify financial misconduct (Hobson et.al, 2012). On the other hand, employees have easier access to insider or sensitive information, but they lack the ability to enforce appropriate reporting behaviour or to directly levy penalties against their company. Most of the time, blowing the whistle allows external parties to request and get access to information about an alleged misconduct and to involve the authorities (Zingales, 2004). For the SEC, the whistleblower program is one of 'the most powerful weapons in [its]...enforcement arsenal', as it helps 'identify possible fraud and other violations much earlier than might otherwise have been possible' (Karpof et. al, 2008). Therefore, in countries, such as the US, there is a long tradition of promoting whistleblower activity as an accountability mechanism complimentary to the operation of external monitors on financial reporting activities. The False Claims Act in 1863 stipulated that individuals not affiliated with the government who initiate or file actions against federal contractors claiming fraud against the government, will be rewarded with a percentage between 10% and 30% of any award or settlement amount. Similar incentives can also be found in the more recent Dodd-Frank Act 2010 for whistleblowers who voluntarily provided original information to

the SEC that led to the successful enforcement of an action resulting in monetary sanctions exceeding \$1 million (15 U.S.C. § 78u-6(b)).¹

This is related to the second important element of whistleblower regulation: the encouragement and motivation of potential whistleblowers. Workers often possess private information about wrongdoing in their company and who may be responsible for these (Yu, 2008). Encouraging them to bring to attention this valuable information would be the most efficient and cost-effective way for companies to stop, mitigate the effect or prevent wrongdoing. As such, internal whistleblowing could be seen as a blessing in disguise for companies and society as a whole, because it brings to the surface corporate misconduct that can harm corporate and social welfare, but companies get the opportunity to deal with them without the involvement of the authorities and the negative publicity (Labaton Sucharow 2012 & 2013).

It is worth noting here that encouraging and rewarding whistleblowers is as challenging as ensuring their protection under any circumstances. There is an ongoing debate in the US and in Europe about the proper incentives and, as will be discussed in the next section, the use of financial rewards. Some whistleblowers have indicated that moral preferences, rather than financial incentives, drive their decision to report (Miceli et.al, 2008). Moral motivation is an important determinant of whether an employee blows the whistle or remains silent and thus knowing more about the factors that moderate this relationship can help companies to design a better incentive strategy to achieve their goal of encouraging internal reporting. At the same time, it has also been shown that personal morality could influence whistleblowing decisions less when employers offer financial incentives to employees for blowing the whistle. Irrespective of their motivation, according to a 2011 survey, 99.5% of self-identified whistleblowers said they blew the whistle because they thought it was the ‘right thing to do’ (Bowles and Polania-Reyes, 2012).

Although whistleblowers perceive their actions as legitimate and necessary either from an ethical or a corporate governance perspective, they need to feel safe from any retaliation practices. 74% of employees, who felt that they could question the decisions of management without fear of retaliation, went ahead and raised their concerns, but only 51% of those, who feared retaliation, reported (Ethics Resource Center, 2012).

¹ It is worth noting that the Sarbanes-Oxley Act 2002 (SoX)’s provisions were aimed at encouraging corporate whistleblowers but not through financial incentives. SoX reflects an attempt to offer enhanced protection to whistleblowers from employer retaliation after they disclose wrongdoing and to provide employees with a standardized channel to report organizational misconduct internally. See Moberly (2006)

The term ‘retaliation’ should be widely construed and cover any action related to public humiliation, harassment, discrimination, threat, demotion, reprisal, punishment, retribution, blacklisting, suspension, and dismissal. In the UK, the Public Interest Disclosure Act 1998 (s. 47B) makes explicit reference to the right of a worker not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that the worker has made a protected disclosure. If, for example, an employee is dismissed in connection with their protected disclosure, such dismissal is automatically unfair. Companies should be prepared to show zero tolerance of retaliatory practices of any kind against whistleblowers and such practices should be grounds for disciplinary action. No whistleblower legislation should allow exceptions, because lack of full support to whistleblowers would mean covering up and fostering misconduct and wrongdoing. The overarching aim of companies and legislators should be to promote a culture where honest disclosures are respected, valued, and even rewarded (Frey and Jegen, 2001).

A further problem in relation to the phenomenon of retaliation against whistleblowers is the difficulty of proving that they were actually retaliated against as their companies could claim that the measures in question, including dismissal, blocked career progression or disciplinary were taken due to performance-related reasons and not in retaliation for whistleblowing. In the UK, there are different burdens of proof on the plaintiff depending on whether or not they seek to bring a claim for unfair dismissal or because they have suffered a detriment. At the same time, this diversity in relation to the burdens of proof work against a whistleblower, because it creates confusion, makes the law less accessible to whistleblowers, and of course more expensive and time consuming (Blueprint for Free Speech, 2016).

Surveys in the US and Australia in the 1990s returned disappointing results as to the companies’ attitude towards whistleblowers, as in the US almost 90% of these employees ultimately lost their jobs or were demoted, while there were lawsuits initiated against 27% of them (McMillan, 1990). In Australia, 20% were dismissed and 14% were demoted; 14% were transferred (to another town, not just within the department); 43% were pressured to resign; and 9% had their position abolished. Such high percentages serve as evidence of a certain pattern of behaviour through which companies were sending a clear message to potential whistleblowers that the response will be crushing in intensity (Lennane, 2012). It is positive that recommendations have been included in international good practice documents²

² See, among others, OECD, ‘Committing to Effective Whistleblower Protection’, OECD Publishing, Paris, 2016, G20 Anti-Corruption Action Plan, ‘Protection of Whistleblowers - Study on Whistleblower Protection

to reverse the burden of proof. However, it remains to be seen whether these recommendations will be translated to legislative provisions and to what extent they will bring a positive change. This is another area where law should aim at changing the existing culture, because, even when the whistleblower employee remains in the company, the variety of informal retaliation tactics is remarkable, including isolation, removal of normal work, inspections, repeated threats of disciplinary action and referral for psychiatric assessment/treatment (Bjørkelo, 2013; McDonald and Ahern, 2002). One consequence of publicizing stories about retaliation might be that less corporate executives or employees would be tempted to become whistleblowers. Even those employees, who are ethically driven and thus feel that they have no choice but to step up and speak, may still think about it twice

As has become apparent, whistleblowers are not adequately protected and the perception that the existing legislative framework is effective is far from accurate. What is clear and needs to be underlined is that there are a few pieces missing to complete the jigsaw of whistleblower regulation and these pieces are not concerned with the letter but with the spirit of the law. We need to nurture a culture of ethics, not just a culture of compliance. Embedding a culture of continuous improvement in ensuring transparency, accountability and openness, instead of a culture of silence, in combination with a set of robust processes, can be the key to unlock the riddle of efficient whistleblower protection and minimise retaliation, fear and oppression.

3. Can culture be the answer?

Creating the right organisational environment where voices can be aired and effective action can be taken will remain a daunting task, as long as whistleblowing is not seen as an integral part of the wider organisational setting, but as something somehow separate and different, a ‘bolt on’ addition (Mannion and Davies, 2015). Whistleblowing is undeniably a means for maintaining integrity, protecting interests, influencing justice, and righting wrongs without necessarily the fear of public embarrassment, government scrutiny, fines, and litigation. However, more effort is required for whistleblowing to become a default accountability mechanism for all companies and achieve its purpose. This process has to start from within the companies. ‘Regulators are not able, and should not try, to determine the culture of firms. They cannot write a regulatory rule that settles culture. Rather, it is the

Frameworks, Compendium of Best Practices and Guiding Principles for Legislation’, 2012, Council of Europe, Committee on Legal Affairs and Human Rights, ‘The protection of “whistle-blowers”’, Doc. 12006, 2009 and Council of Europe, Parliamentary Assembly, ‘Protection of “whistle-blowers”’ Resolution 1729, 2010.

product of many things, which regulators can influence, but much more directly which firms themselves can shape' (Bailey, 2016). Regulators can point towards the right direction and require companies to nurture an appropriate culture. Integrity is evidenced by the ethical behaviour of all corporate stakeholders, including employees, managers and regulatory authorities. The legislation will indicate what is the moral and ethical path that companies should be following and then companies will have to show their commitment by creating an ethical culture. Such culture is a macro level of ethical consideration having developed from the micro level of personal integrity and ethical behaviour (Predmore et.al, 2018).

There is much written about the importance of setting 'the tone from the top' (Laasch and Conaway, 2015; Schwartz et.al, 2005). It is the responsibility of management to inspire their employees using a collection of shared values and a common mindset based on integrity, fairness and 'doing the right thing'. It is not simple to set an example and promote ethical conduct, because it rests upon the willingness of people throughout the organisation to adopt and adhere to that tone from the top. Operating in an 'ethical culture' is far from a mere box-ticking exercise; it requires commitment and emphasis to the effective implementation (Awrey et.al, 2013; Kaptein, 2009). Having the right organisational rules and controls in place is necessary, but they alone are insufficient, unless they are embodied within a vibrant ethical culture and a community of trust. Sometimes rules may not connect with the company's culture or align with its operations, they may intimidate rather than inspire employees or they may be detached from business reality. In this case, they do not meaningfully convey a 'tone at the top', unless those at the top of the organization show leadership on this issue and ensure that the message that it is accepted and acceptable to raise a whistleblowing concern is promoted regularly (BSI Code of Practice, 2008).

Rules do not exist in a vacuum and the environment where the rules operate is as important as the rules themselves. There will always be a gap between the 'letter' of the law and the norms of society in any legislation which aims to change or regulate human behaviour (Ashton, 2015). Companies should step in at this point and build a bridge that would allow employees to cross the Rubicon and blow the whistle, if they come across potential illegality or significant risks to their companies. A recent empirical project in the UK showed that some 83% of respondents blow the whistle at least once but mostly internally compared to 15% raising their concerns externally. This is encouraging, as it shows that the government has managed to convey to the business community the message about the significance of relying on internal reporting. However, the next findings support the assumption that the real problem is not the rules, but within the companies themselves. 75%

of the respondents maintained that nothing was done about the wrongdoing, with 65% receiving no response from management, while the most likely response was demotion and dismissals (PCAW/University of Greenwich, 2014).

The focus should be on the culture and not solely on the rules for one additional reason. Research on whistleblowing in many jurisdictions consistently shows that one of the main reasons for not reporting concerns is that whistleblowers do not believe that it will make a difference. In fact, American surveys of federal employees repeatedly found that the fear of retaliation is only the second reason why some half a million employees choose not to blow the whistle. The primary reason is that they do 'not think that anything would be done to correct the activity' (Devine, 2004; Lewis et.al, 2017). According to the Association of Certified Fraud Examiners (ACFE), this perception does not reflect reality, because tips were the source of information for more than 40% of reported instances of occupational fraud. The SEC confirms this approach, stating that 'even if a whistleblower's tip does not cause an investigation to be opened, it may still help lead to a successful enforcement action if the whistleblower provides additional information that substantially contributes to an ongoing or active investigation' (Association of Certified Fraud Examiners, 2012).

In the Francis Report (Freedom to Speak Up, 2015), the term 'culture' appears 294 times. Apparently, culture has become a buzzword and this is positive, because this is what all the attempts and initiatives should focus on: how to shape a company's culture and how to combine law and culture in a sustainable way. The answer is not easy, because culture is really deep-rooted. Cultural values are often so internalised that they are unspoken; they are communicated pervasively and absorbed by osmosis rather than by bold statements of organisational ethics and values. The initiative for the shaping (or the changing) of a company's culture comes from the top but for the changes to take effect they must occur throughout the company. To effectively change the culture, it is not enough to communicate values verbally, but ensure that everybody within the company 'lives' them; in other words, everybody demonstrates their commitment to a particular set of values and behaviours and equally expects others to follow suit (Miller, 2017).

Changing the mind-set is a really difficult undertaking and it takes time and strong will. Instead of reproducing the same general recommendations that led to the creation of ineffective paper policies, which allow companies to do just the minimum amount required in order to comply with the law, this chapter puts forward a more practical solution for both US and UK; a suggestion that aims at using legislation together with corporate culture with view to achieve stronger protection to whistleblowers.

4. An example to follow?

A provision based on section 7 of the UK Bribery Act 2010 should be added in the existing set of rules. Section 7 of the Bribery Act 2010 introduces a new offence by a commercial organisation to prevent a bribe being paid to obtain or retain business or a business advantage.³ The available defence for a company, should an offence be committed, is to prove that it has adequate procedures in place to prevent bribery. Section 7 basically shifts the burden of proof away from the authorities towards the core of the problem, the companies themselves.

The example of the Bribery Act was chosen for a variety of reasons. First of all, it was recently introduced in the UK to update and enhance UK law on bribery, a burning issue with international implications that is closely related to corruption, the same as whistleblowing. Secondly, the 2010 Act represents an example of national law inspired by international initiatives and standards, more specifically the 1997 OECD anti-bribery Convention. Thirdly, it has received positive comments and it is regarded as being among the strictest legislation internationally, not only in terms of penalties, but notably because it introduces a new strict liability offence for companies which are failing to prevent bribery.

A similar approach, if adopted in the context of whistleblower protection, would effectively kill two birds with one stone. On the one hand, companies will not be able to hide behind their commitment to fight corruption and encourage internal whistleblowing; they would have to provide apt evidence, not empty promises, that they have strong, up-to-date and effective policies and systems. On the other hand, the whistleblowers themselves will eventually stop being side-lined or seen as liabilities, but they will have to be integral parts of their companies' anti-corruption and whistleblower protection strategy.

The rationale behind the introduction of a section 7-type rule is not to unduly burden companies with another box-ticking exercise, but to target individuals who treat whistleblowers as 'snitches, troublemakers and backstabbers' (Campbell, 2013). It also fits well with the existing legislative framework and, more specifically, section 47B (1D) of the

³ Failure of commercial organisations to prevent bribery

(1) A relevant commercial organisation (C) is guilty of an offence under this section if a person (A) associated with C bribes another person intending—

(a) to obtain or retain business for C, or

(b) to obtain or retain an advantage in the conduct of business for C.

(2) But **it is a defence for C to prove that C had in place adequate procedures designed to prevent** persons associated with C from undertaking such conduct

Employment Rights Act 1996, which allows an employer to avoid vicarious liability if it took reasonably practicable steps to prevent workers retaliating against whistleblowers. This requirement goes beyond mere compliance with the law. Companies will be expected to send a strong message to their employees and stakeholders that the company is built on ethical foundations and is truly committed to promote a culture of openness, with whistleblowing protection being one of the key components.

It will be the responsibility of the senior management and the board of directors, i.e. the typical offenders in most whistleblowing cases, to ensure that all internal and external actors are aware of and familiar with the relevant policy and commitment to establishing a new culture, and the consequences of breaching the policy. In this way, companies of all sizes will have the opportunity to design and implement a 'zero tolerance' policy against mistreatment of whistleblowers throughout their operations over and above inadequate box-ticking systems not supported by a suitable corporate culture and values deeply embedded in the company (Whipp, 1989). The question of adequacy of internal procedures will ultimately depend on the facts of each case, as consideration needs to be given to a number of relevant factors, such as the company's previous conduct and the seriousness of mistreatment.

In addition, emphasis must be given to the effective implementation of these policies. Companies may believe they have been effectively implementing their policies, but it is easy to be over-confident about this. Therefore, it is of paramount importance to ensure that the board, management, agents, employees and stakeholders understand the requirements of the policy and that there are adequate internal controls to monitor its implementation. A robust 'checks and balances' system involves a two-tier arrangement: a) proper documentation and filing of the concerns raised, their handling and the outcomes and b) periodic reports to senior management and possibly the board on the issues raised, the actions taken and the promptness with which inquiries were dealt (Transparency International, 2010).

Finally, effective training should be implemented providing details of how to raise concerns, the available channels and procedures, how people will be protected and how they will be kept informed of the outcome of the process. At the same time, training should be given to senior management on how to deal with disclosures effectively, how to operate whistleblower 'hotlines' and other channels and how to communicate the whistleblower policy as part of the company's culture. Communication through posters, newsletters, periodic training sessions, staff orientation, ethics and compliance communications, refresher speeches from senior management, staff surveys and awareness tests is of key importance. Gradually, people will develop a sense of trust to the company's

senior management and a feeling of confidence in the integrity, independence and effectiveness of the company's whistleblowing procedures.

The main objective of adding such a requirement to the existing legislation is not to penalise and harm the reputation of well-established and successful corporations that experience an isolated incident involving allegations for mistreatment of a whistleblower. A full defence will be provided, recognising the fact that no regulatory regime will be capable of eradicating certain behaviours at all times. Additionally, a defence should also be available so that companies are encouraged to set up the right mechanisms for supporting internal whistleblowing and protecting whistleblowers against any illegal or unethical action. Good whistleblowing arrangements send a clear message that if employees have a concern, the company encourages them to raise it through the available channels and procedures. The message should be that it is safe and acceptable to raise a concern and that disclosures will be heard, assessed and dealt with appropriately. Openness is the safest strategy and employee confidence in the integrity of the arrangements underpin and demonstrate a company's commitment to strengthening its organisational ethos (O'Brien, 2010). The onus rests primarily on the shoulders of directors and managers, who need to show leadership and pave the way for the creation of an environment where employees feel safe to raise concerns, where there is greater accountability of managers and leaders (when necessary) and where disciplinary action is taken against individuals, who are found to have mistreated employees who have raised concerns or have blown the whistle.

Employees can be reluctant to speak up and raise concerns for fear of being discriminated against, disbelieved, bullied, seen as disloyal or disrespectful, and for fear that blowing the whistle will negatively affect their career progression or their future in the company. Such mentality can only be removed when there are proper protection mechanisms in place as well as examples that these mechanisms are in fact working properly. For instance, in the UK and US health sector there have been several initiatives to encourage whistleblowing ('Stop the Line', 'If in doubt speak out' or 'Don't walk by'). These attempts have significantly contributed in raising awareness, but they must be supplemented by additional initiatives with view to normalising the raising of concerns.

Normalisation cannot be achieved by process and procedure alone. Process and procedure need to sit within a culture that inspires confidence that raising concerns will be dealt with in an appropriate way. If whistleblowers have suddenly been subject to critical appraisals and poor performance processes, a negative perception of whistleblowers as 'troublemakers' is reinforced, setting back attempts to change the culture, while at the same

time other employees are deterred from coming forward with concerns for fear they too will end up being performance managed.

Changing the mind-set is a one-way street for achieving effective whistleblower protection. Research undertaken by the Financial Conduct Authority (FCA) showed that the introduction of financial incentives for whistleblowers would be unlikely to increase the number of quality disclosures made (Financial Conduct Authority and Prudential Regulation Authority, 2014). The general feeling is that we need to aim for better protection for all whistleblowers rather than financial rewards for a few. The introduction of an additional duty to companies to actively promote whistleblowing and to be able to provide evidence if required is the key for this ethical transformation to take place. Section 7 of the Bribery Act 2010 can be used as an example and it can serve as the missing link in the process of normalisation of whistleblowing and adequate safeguarding of whistleblowers' rights.

5. Concluding Remarks

Although whistleblower protection has attracted considerable attention and there is increasing activity involving the development of whistleblowing policies and regulation at both government and corporate level, the existing framework that is in place internationally does not offer sufficient assurances to potential whistleblowers. The question with which this chapter deals is how we can ensure that all potential whistleblowers will not be discouraged and will blow the whistle on improper activities without the fear of being ignored or retaliated.

The answer lies in the culture of ethics within a company and industry in general. Such culture should determine or at least influence 'what employees perceive to be the public interest or a matter of conscience ahead of the interests of their employing business or institution' (Lofgren, 1993). Employees should not be left on their own fraught with conflicting values, responsibilities, and loyalties. They should be allowed to make an informed decision without any pressure or coercion from their employers and colleagues. This informed decision should be in line with the business culture and the set of values that each company has developed and maintains (Westman, 1991).

It is of paramount importance that all employees are not only informed about their company's position on whistleblowing or on reporting, but also about the fact that they have a commitment to report any wrongdoing they may come across. The basis of their commitment is not merely their personal perspective on ethics, but primarily their company's

perspective. This approach does not reject altruism and selflessness, which can act as strong incentives for a number of individuals, however a further reinforcement of the need to do what is right should be provided. If an ethical corporate culture has been established and is deeply embedded in the company, then there is not much need for monetary rewards or extra incentives; 'virtue may be its own reward' (Callahan and Dworkin, 1992).

Law and corporate culture should be promoted as the most efficient means to provide adequate protection to whistleblowers. The law prescribes the procedures to be followed and the safeguards in place and companies, along with their management teams, should show that they are really committed to applying the law and increasing their employees' sense of organizational justice. Section 7 of the Bribery Act offers an alternative perspective and can be used as a roadmap for legislators and authorities around the world to strengthen the existing set of rules and stimulate the much-awaited change of culture in relation to transparency, accountability and whistleblowing. Such a solution aims at shifting the burden away from the employees, who wish to help their company, so that there are no examples where we shot the messenger, overlooking the message that is being delivered. At the same time, companies participate actively in this culture shift taking reasonable steps to ensure that their staff is informed about the whistleblowing policy, concerns can be raised and action will be taken, where necessary, by the corporate managers, and there are no instances of whistleblowers being harassed, marginalised or dismissed. Finally, it becomes clear that the government and the authorities do not aim at penalising and harming the reputation of companies; quite the contrary, companies are given the opportunity to redeem themselves by endorsing accountability instead of a culture of introversion and silence.

Only a strong ethical corporate culture can eliminate or at least ameliorate the disincentives to whistleblowing. In the new era, openness and trust in the whistleblowing process will motivate employees, especially when whistleblowing concerns are solicited and addressed effectively, when cover ups are resisted and when those at the top lead by example.

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