

“It’s the Right Thing to Do”: Giving Financial Services Employees the Confidence to Speak Up

Cathy James
Chief Executive
Public Concern at Work



Summary

- Public Concern at Work is a charity that has helped and advised over 17,000 whistleblowers over 21 years.
- Encouraging whistleblowing is in the employer’s best interests. With staff being the eyes and ears of the organisation, whistleblowers provide a vital early detection and alert function for internal problems that can and do arise.
- Studies of organisations in the United States that have whistleblower-friendly policies in place decisively show that such an approach eliminates a potential blame culture by shifting focus to understanding the problem and finding solutions, while resulting in fewer external complaints. They are also key to rebuilding public trust and crucial to publicly demonstrating good governance.
- However whistleblowing continues to be discouraged and even punished. Research by Public Concern at Work found that 75% of whistleblowers claim that they are ignored, and the most common action taken against whistleblowers is formal action such as disciplinary or demotion. So widespread mistrust prevails among employees that doing the right thing will actually result in a good outcome.
- With these challenges in mind, several initiatives led by Public Concern at Work have encouraged better practices in the UK. A Code of Practice for workers, employers and regulators based on the findings of the Whistleblowing Commission has been launched. The Code has been formally adopted by thirty-six organisations across several sectors including some financial services firms.

The Chartered Insurance Institute is the world’s largest professional body for insurance and financial services and is the leader in awarding qualifications to industry practitioners. Our Thinkpieces are a key part of our ongoing commitment to promoting innovative thinking and debate within the insurance and financial sectors.

The views expressed within the article are those of the author and should not be interpreted as those of the Chartered Insurance Institute or their members. Public Concern at Work has asserted its right under the Copyright, Designs and Patents Act 1988 to be identified as the author and copyright owner of the text of this work, and has granted the CII worldwide perpetual licence to reproduce and distribute it in whole and in part. We welcome suggestions from potential contributors, but we are also seeking feedback from our readers. We urge you to get involved—especially as we intend some of our articles to be open to rebuttals for publication.

CII Introduction: most of us have been trained from childhood to behave ethically and to summon the courage to speak out if we witness or are asked to do objectionable things. Yet these principles are often set aside as soon as we become employees. Both first-hand and through the media, we regularly get revelations of unethical or even public-harming activity uncovered by individual employees caught in a conscience dilemma. Worse, we more often hear of reprimand rather than reward for those doing what they felt was the right thing, under the all-too-familiar euphemisms of “making waves” or “not being a team player”. What is being done to ensure that these genuinely well-meaning staff are appropriately protected? In this article, Cathy James, Chief Executive of the whistleblowing charity Public Concern at Work describes some of these issues and what is being done to address them.

Week in, week out whistleblowers are top of the news agenda. Scandalised institutions are often told to make whistleblowing a priority in order to re-establish public trust and to remedy the harm caused by a silent workforce. On the Public Concern at Work advice line we frequently hear from workers in financial services firms experiencing difficulty after raising concerns. This is also reflected in the stories that catch the media’s attention. The BNP Paribas case is one such example. The US Justice Department included evidence that whistleblowers had alerted senior management in vain to efforts to conceal transactions with Sudan, Cuba and Iran, all in breach of US sanctions. Similarly, the Barclays case brought by the New York Attorney General’s office over alleged improprieties in its “dark pool” trading business, cited the dismissal of a bank director who refused to alter an analysis which allegedly could have alerted customers being misled about their trades.¹ As Chief Executive of whistleblowing charity Public Concern at Work, I am often asked how we inspire confidence in our workforce to speak up proactively to prevent wrongdoing, risk or malpractice when faced with such challenges?

The benefits of whistleblowing

A healthy and open culture is one where people are encouraged to speak out, confident that they can do so without adverse repercussions, that they will be listened

¹ H Engler, ‘BNP case spurs calls for whistleblower incentives in banking’, *Reuters*, 21 July 2014.

to, and that appropriate action will be taken. This is to the benefit of organisations, individuals and society as a whole.

Effective whistleblowing is vitally important as it helps the early detection and prevention of wrongdoing.

For employers, it is as the cliché goes: prevention is better than cure. Effective whistleblowing is vitally important as it helps the early detection and prevention of wrongdoing. Every employer faces the risk that something will go badly wrong in their organisation and ought to welcome the opportunity to address it as early as possible. Whenever such a situation arises the first people to know of such a risk will usually be workers yet while these are the people best placed to speak up before damage is done, they often fear they have the most to lose if they do. You can call this “speaking up”, “raising concerns” or “whistleblowing”. They are all the same process. Enlightened employers will focus on how to encourage staff to speak up, rather than considering the legal framework for when things go wrong. They will recognise that staff are the eyes and ears of the organisation.

While this may seem utopic it needn’t be. One case that particularly captures my imagination is that of Toyota and the ‘stop the line’ policy. Under this procedure, junior workers were able to pull a cord and bring the entire multi-million-pound operation to a halt causing a manager to dash over to understand the problem. This process eliminates blame culture as the focus shifts to understanding the problem and preventing future risks. The Virginia Mason hospital in Seattle has recently been praised by health minister Jeremy Hunt for adopting a similar approach to patient safety. The results have been astonishing. Since deciding to admit all its mistakes, Virginia Mason has seen the number of potential complaints and legal claims decrease from about 100 a month to 25, with savings being ploughed back into safety programmes. The hospital has also seen a 74 per cent reduction in its liability insurance premiums.²

² ‘Can the Japanese car factory methods that transformed a Seattle hospital work on the NHS?’, by N Allen, *The Daily Telegraph*, 3 July 2014.

Effective whistleblowing arrangements are also key to rebuilding public trust and crucial to good governance. This is particularly relevant to the financial services sector. For starters, organisational culture has been a key element of the Financial Conduct Authority (FCA)'s approach to regulating the sector and supervising individual firms since its inception last year, over and above the treating customers fairly principle which has been a major emphasis for both the FCA and its predecessor. Moreover, if it is genuinely firms' intention to win back public trust and confidence after the financial crisis, then demonstrable governance and culture changes to pay attention and empower staff to speak up early and effectively can only be a good thing.

The legal framework: the Public Interest Disclosure Act 1998

From research that we conducted with the University of Greenwich (*Whistleblowing: the inside story*) in which 1,000 of our cases were examined, we found that in 60% of cases no response (either positive or negative) was received by the whistleblower.³ Of the remaining 40% of cases, the most common response from an employer was a formal disciplinary action such as demotion. Dismissal occurred in 6% of cases. Workers are able to seek compensation for victimisation and/or dismissal where they have raised a concern which they believe is in the public interest and tends to show wrongdoing or malpractice to an Employment Tribunal. This is set out in the Public Interest Disclosure Act (PIDA) 1998. The tests for establishing whether or not an individual's disclosure is protected differ depending on who the individual has approached with their concern. Disclosures to employers, regulators such as the FCA and even to MPs are more readily protected. Where disclosures are to the media, the test for protection is much higher and a tribunal will consider whether or not the worker raising the concern has behaved reasonably in the circumstances. Compensation under the PIDA is unlimited with one of the highest awards in the finance sector being given to two bankers who received a payment of £5m. PIDA claims are relatively rare and they

³ "Whistleblowing: The Inside Story", University of Greenwich and Public Concern at Work, www.pcaw.org.uk/whistleblowing-the-inside-story

account for less than 1% of all Employment Tribunal claims.

Employers must encourage their staff to speak up

Most workers look to raise their concerns internally. This was confirmed by our research *Silence in the City*, an in-depth analysis of 320 calls to our advice line from workers in financial services which provided a unique insight into the barriers and challenges people working in the sector face.

The research revealed a widespread lack of trust in the internal disclosure mechanisms. Much of this distrust was well-founded: many of those who did have the courage to come forward found they were ignored, victimised or even dismissed. The top six concerns were: fraudulent or criminal activity (17%), mis-selling (14%), breach of company policy (such as recruitment procedures or code of conduct) (14%), breach of legal or regulatory obligations (13%), incorrect reporting to the employer or stakeholders (6%) and incorrect reporting to a client or third party (5%). We also had calls about market abuse, insider training, money laundering and tax fraud.

Nearly all callers stated that there were other witnesses (99%), yet 84% of workers said they raised a concern alone.

Half of all cases involved wrongdoing that harmed the public (49%). In 76% of cases the wrongdoing was recurring. Despite having witnesses to the misbehaviour, whistleblowers are often forced to act alone: nearly all (99%) callers stated that there were other witnesses, yet 84% said they raised a concern alone. 62% of workers raised a concern at least once. This is higher than the 44% finding from *Whistleblowing: the inside story*. However, those in financial services were less likely to raise a concern a second time (20%), which is much lower than our findings on all sectors (39%) from *Whistleblowing: the inside story*.

This was also confirmed in our 2013 YouGov survey of the UK working population that found 4 out of 5 people would raise their concerns internally. Research from *Whistleblowing: the inside story* also demonstrated the limited opportunities that organisations have to hear about potential wrongdoing, and reminds employers that

they need to create an environment which empowers workers to speak up without fear of reprisal and in the knowledge that they will be listened to. 74% of whistleblowers who raised concerns said that nothing was done about the wrongdoing. The perception that raising a concern will not make a difference is an important challenge for organisations trying to create a speak-up culture.

Initiatives to instil a whistleblower-friendly culture

So how do we overcome these not insubstantial challenges? As the charity aimed at protecting whistleblowers and creating a more whistleblower-friendly workplace, Public Concern at Work (PCaW) has helped over 17,000 whistleblowers over 21 years:

- We advise individuals with whistleblowing dilemmas at work;
- We support organisations with their whistleblowing arrangements; and
- We inform public policy and seek legislative change.

Last year, we set up the [Whistleblowing Commission](#) to review whistleblowing in the UK and make recommendations for reform. The Commission concluded that current legislation is “not working” and immediate change is needed to ensure whistleblowers are given the confidence to speak out without fear of adverse repercussions.

We created a Code of Practice based on the recommendations of Whistleblowing Commission. The Code makes 15 recommendations for raising, handling, training and reviewing workplace whistleblowing.⁴ Key requirements include:

- confidentiality will be maintained where requested;
- clear assurances are given to staff about protection from reprisal;
- specific individuals have responsibility for the arrangements;
- there is a need for greater oversight of whistleblowing arrangements by non-executive directors or equivalent; and

⁴ Code of Practice: www.pcaw.org.uk/files/PCaW_COP_FINAL.pdf

- there is a review of the effectiveness of the arrangements and publication of key data.

One way to achieve this is to sign up to PCaW's *First 100* campaign, which provides public recognition of those organisations striving for best practice.⁵ There are now 36 signatory organisations spanning the public and private sectors, including Royal Bank of Scotland, Diaego, ITV, the Civil Aviation Authority, the Nursing and Midwifery Council and Chelmsford City Council.

If you have any questions or comments about this Thinkpiece, please contact us: thinkpiece@cii.co.uk; +44 (0)20 7417 4783.



Public Concern at Work (PCaW) is an independent whistleblowing charity and legal advice centre which provides free confidential legal advice to those who wish to raise a concern about wrongdoing, risk or malpractice in the workplace. The charity advises over 2,000 individuals annually. Current areas of work include a campaign to amend the UK whistleblower protection legislation, awareness and policy in this key area through the Whistleblowing Commission. Other recent projects include whistleblowing in the financial services and in local government, as well as appropriate regulatory approaches across all sectors. PCaW has also provided expert input into a Council of Europe feasibility study for a legal instrument on the protection of whistleblowers and was an invited expert for a European Commission funded study on whistleblowing run by Transparency International. www.pcaw.org.uk

As the leading professional body for the insurance and financial services sector with over 117,000 members in 150 countries, **the Chartered Insurance Institute** is committed to protecting the public interest by guiding practitioners towards higher professional, technical and ethical standards. We offer a broad portfolio of services and support, including encouraging firms to adopt whistleblowing-friendly policies, recently publishing guidance for members on speaking out. www.cii.co.uk/about/professional-standards/whistleblowing---speaking-up/

⁵ Details of First 100 campaign: www.pcaw.org.uk/first100