

# Whistleblowing

In 2013 The Whistleblowing Commission stated; *“Effective whistleblowing arrangements are a key part of good governance. A healthy and open culture is one where people are encouraged to speak out, confident that they can do so without adverse repercussions, confident that they will be listened to, and confident that appropriate action will be taken. This is to the benefit of organisations, individuals and society as a whole.”*



Between 2016 and 2017 it is estimated that over 2000 whistleblowing cases were heard in employment tribunals. Whistleblowing is an important part of how a company can encourage its employees to report specific issues without fear of reprisal or retribution. This piece of legislation can also be a key element in the continuing fight against internal company issues of Bribery and Corruption and also install confidence throughout its supply chain. Whistleblowing in the United Kingdom is covered by the Public Interest Disclosure Act 1998. However, you are only protected in certain circumstances (protected disclosure) and if that report relates to any of the following issues:

- A criminal offence, such as fraud
- Someone's health and safety is in danger
- Risk or actual damage to the environment
- A miscarriage of justice
- The company is breaking the law
- You reasonably believe someone is covering up wrongdoing
- **AND THERE MUST BE A REASONABLE BELIEF THAT THE MATTER IS IN THE PUBLIC INTEREST**

The FCA goes on to say that reportable concerns can also include:

- Breaches of PRA and FCA Rules
- Breaches of a company's policies and procedures
- Behaviour that harms or is likely to harm the financial well-being or reputation of a company

Personal grievances such as bullying, harassment, discrimination and unfair treatment are not covered by whistleblowing legislation, unless the particular allegation is in the public interest. Such matters should be referred to the company's local Human Resources (HR) team and dealt with under a grievance procedure.

Retribution when whistleblowing is not only illegal but a key factor when employees decide not to blow the whistle. According to a recent EU commissioned public consultation, legal and financial consequences together with bad reputation, feature highly in reasons not to use a whistleblowing service. Companies need to foster a competent and confidential whistleblowing culture allowing employees to

comply with the legislation, but it should not be used to air grievances against their employer which should be done through a familiar HR route.

In its latest report the Financial Conduct Authority made several recommendations concerning whistleblowing, including proper training and guidance for employees on how to whistle blow supported by a transparent policy. Organisations should have a documented step by step investigation process together with a separate policy on how to protect whistleblowers and triage the information obtained. Incorrectly offering protection under the whistleblowing protocols, when the information being provided falls below the threshold, could have implications for the whistleblower and adversely damage the trust required when reporting incidents.

Dealing with a whistleblower in a professional and compassionate manner will instil trust in the system. The concept of a sterile corridor is well founded in British law enforcement circles and should be applied when dealing with information from a whistleblower. The gap between handlers of the disseminated information provided by a whistleblower and persons carrying out the investigation should be transparent. The benefits of applying the principles of Covert Human Intelligent Sources, or 'CHIS' handling should be self-evident. Utilising the skills of those familiar with this practice should not be underestimated and considered when examining your existing or new policy.

There are examples to be found where whistleblowers believe that they have not been treated fairly or dealt with properly which inevitably account for a large number of matters brought before employment tribunals worldwide. One example would be the case involving International Petroleum, where Alexander Osipov received a £2 Million award for his dismissal in 2014, primarily for protected disclosure under whistleblowing. We have also recently seen a high profile case involving Jes Staley, the Chief Executive of Barclays Bank, who attempted to unmask a whistleblower by using the banks internal security team. This was punished with huge fines on both Barclays and Jes Staley personally.

Whistleblowing is a key part of developing a culture of transparency and fairness in the workplace. It gives employees a voice when they discover issues that should be aired in a manner where they will be heard and appropriate action taken. These policies and actions demonstrate to stakeholders, regulators, supply chain and the courts that an organisation is accountable and well managed. There is no doubt that it will also contribute to ensuring employees have a pleasant work environment.

Eminent now offer a monthly subscribed response service for its clients. This utilises the specialists highlighted above, who have the experience to deal with information of this nature and those providing it. Our service differs from the online responses already offered by a host of providers and reverts back to confidential human contact, offering hands on reassurance, flexibility and removes other types of electronic audit trails, such as email or text style services. Each incident is fully examined to ensure it passes the threshold required to qualify for whistleblowing status and the valuable protection the legislation offers to employees. To discuss your own specific requirements, please contact the office using the details below.

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