

THE BUSINESS CASE FOR “SPEAKING UP”

How Internal Reporting Mechanisms Strengthen
Private-Sector Organisations

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CONTENTS

The business case for "speaking up"	2
What does a strong internal reporting mechanism look like?	3
1. Public signal of commitment to integrity and social responsibility	5
2. Prevention and mitigation of liability	6
3. Prevention and mitigation of financial losses	7
4. Continuous improvement in compliance and risk management	8
5. Strong reputation	9
6. Enhancement of organisational culture	9
FAQs	11

THE BUSINESS CASE FOR “SPEAKING UP”

The business case for companies to adopt robust internal reporting mechanisms is clear. Such mechanisms enable staff to speak up about legal or ethical misconduct. They help protect companies from the effects of misconduct, including legal liability, serious financial losses and lasting reputational harm. Effective internal reporting mechanisms also foster a corporate culture of trust and responsiveness. Companies have found that such mechanisms provide real benefits to their culture, brand, long-term value creation and growth.

The potentially disastrous consequences of legal or ethical misconduct in business have been demonstrated repeatedly. In numerous high-impact cases, misconduct has caused injury and fatalities, serious environmental harm or human rights violations. Effective internal reporting mechanisms – combined with a culture of trust and an immediate response from leadership – would have helped the organisations involved to avoid such dire consequences and their repercussions for business.

Also known as “speak up” or whistleblowing mechanisms, internal reporting mechanisms consist of policies and procedures that proactively encourage employees – as well as third parties such as suppliers, service providers and customers – to raise concerns *internally* about potential misconduct. This includes bribery, fraud, environmental abuse, health and safety violations, discrimination, harassment, conflicts of interest and misappropriation of corporate assets. The mechanisms protect those raising such concerns from retaliation and guide an organisation’s timely response to prevent or mitigate any harm to the public and to itself.

Several surveys conducted in Europe and globally indicate that most large multinational enterprises (MNEs) have some type of “speak up” mechanism in place.¹ However, most of these companies fail to provide users with effective protection against retaliation. Surveys and anecdotal evidence show a much lower adoption rate for small- and medium-sized enterprises (SMEs).²

Private-sector leaders clearly need to do more to create environments conducive to speaking up internally. This would enable them to avert potentially disastrous consequences and provide real financial and cultural benefits to their organisations.

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1. Transparency International reviewed a number of surveys, studies and benchmark reports, including the Institute of Business Ethics (IBE), *Corporate Ethics Policies and Programmes Survey of the UK and Continental Europe*, 2016; Le Cercle d’Ethique des Affaires, Foretica and IBE, *Usage Levels of Speak Up Systems in European Companies*, 2015; OECD, *Survey on Business Integrity and Corporate Governance*, 2015; Association of Certified Fraud Examiners (ACFE), *Report to the Nations on Occupational Fraud and Abuse*, 2016; Ernst & Young, *Global Fraud Survey*, 2016; and NAVEX Global, *Ethics and Compliance Hotline and Incident Management Benchmark Report*, 2017.
 2. The abovementioned ACFE Survey found that for companies with more than 100 employees, the rate of hotline implementation was 74.1 per cent, whereas the implementation rate for companies with less than 100 employees was only 25.7 per cent (ACFE, 2016, p. 39). An Australian study found that while most organisations reported having systems for recording and tracking concerns of wrongdoing, 37.1 per cent of small organisations had no particular system in place, either altogether, or as needed when concerns were raised (A.J. Brown and Sandra Lawrence, *Strength of Organisational Whistleblowing Processes – Analysis from Australia*, Griffith University, May 2017, p. 3).

WHAT DOES A STRONG INTERNAL REPORTING MECHANISM LOOK LIKE?

Four components are essential for an effective reporting mechanism:

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- 1. Active encouragement to speak up:** A company's leadership must urge employees and stakeholders to report misconduct and commit to protecting those who do so.

 - 2. Confidential reporting channels:** Organisations must provide accessible and reliable channels to report misconduct, guaranteeing confidentiality or anonymity.

 - 3. An effective response system:** Procedures must ensure thorough, timely and independent investigations of reports of misconduct.

 - 4. Robust user protection:** People reporting misconduct must be protected from all forms of retaliation, with transparent procedures for investigating retaliation complaints.

Transparency International developed a topic guide on internal whistleblowing mechanisms, which provides an overview of the current debate and a list of the most up to date and relevant studies and resources on the topic.³

3. Transparency International Anti-Corruption Helpdesk, Internal Whistleblowing Mechanisms - Topic Guide, July 2017, www.transparency.org/whatwedo/answer/topic_guide_on_whistleblowing

Internal reporting mechanisms: the benefits

Company testimonies and expert studies show the many benefits of internal reporting mechanisms, including:

- Public signal of commitment to integrity and social responsibility
- Prevention and mitigation of liability
- Prevention or mitigation of financial losses
- Continuous improvement in compliance and risk management
- Strong reputation
- Enhancement of organisational culture

The main questions for most MNEs are not around whether to adopt internal reporting mechanisms, but how to encourage employees to make disclosures, how to manage those disclosures effectively, and how to protect those who speak up from retaliation. For SMEs, the benefits of adoption also apply, and the costs can be contained by adopting mechanisms that are proportional to a company's size and risk profile. SMEs can also take advantage of the many sources of information on best practices, and of non-profit or low-cost service providers who can assist them. The key benefits of internal reporting mechanisms, profiled below, apply not only to profit-driven organisations, but extend to non-profits as well.

“The main challenges in the adoption of internal reporting procedures are to create an environment where people feel safe to raise concerns and to overcome doubts that anything will be done about them. The tone from the top, together with managers leading by example, is key, in addition to the standard, globally recognised processes for independent whistleblowing channels (providing strict confidentiality and supporting anonymity where legally permitted). Frequent communications involving a variety of media is essential at all levels. It is also very powerful if real case studies and success stories, suitably sanitised, can be published.”

– Assicurazioni Generali

1. PUBLIC SIGNAL OF COMMITMENT TO INTEGRITY AND SOCIAL RESPONSIBILITY

Shareholder demands for effective internal ethics and compliance programmes are growing. Research by Ernst & Young suggests an expanding role for environmental, social and governance factors in investors' decision-making worldwide. The survey found that the most important non-financial issue for investors was "good corporate citizenship and issuers' policies on business ethics".⁴ Large institutional investors and pension funds are also pushing for effective approaches to corporate governance and risk mitigation to support long-term value creation.⁵ Internal reporting mechanisms signal to investors and the public that an organisation prioritises risk management, social responsibility and integrity.

Increasing numbers of organisations are seeing the benefits of becoming thought leaders in integrity and Corporate Social Responsibility (CSR). Through the UN Global Compact, more than 12,000 private-sector organisations have committed to aligning their strategies and operations with universal principles on human rights, labour, the environment and corruption prevention, and to advance societal goals.⁶ As part of this voluntary commitment, companies communicate their progress in implementing the Global Compact's principles, including on anti-corruption. Transparency International guidelines encourage companies to report on their progress with respect to internal reporting mechanisms and follow-up channels, which increasing numbers do through their websites and annual reports.⁷

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4. Ernst & Young, *Is Your Nonfinancial Performance Revealing the True Value of Your Business to Investors?*, 2017, p. 22.
 5. Mathew Nelson, *The Importance of Nonfinancial Factors to Investors*, Harvard Law School Forum on Corporate Governance and Financial Regulation, 15 April 2017
 6. UN Global Compact Webpage
 7. Transparency International and UN Global Compact, *Reporting Guidance on the 10th Principle Against Corruption*, 2009, p. 27.

2. PREVENTION AND MITIGATION OF LIABILITY

Private-sector organisations are subject to myriad laws and regulations, covering labour, environmental protection, financial reporting, anti-corruption, product liability, consumer protection, fraud and other forms of crime. Company leaders cannot be everywhere to ensure that all laws and regulations are being upheld, and must therefore rely on employees and stakeholders to speak up if they witness conduct that could expose the organisation to liability. Early detection gives companies the opportunity to address wrongful conduct before a situation escalates to trigger liability. It also provides an opportunity to voluntarily self-report to relevant regulatory agencies, before an agency initiates action and reaches an adverse conclusion because the organisation failed to act.

A survey by Control Risks emphasised the importance of internal disclosure to mitigate liability: 35 per cent of companies said they had conducted an internal investigation in the previous year, following a complaint from an internal whistleblower.⁸

Whistleblower protection laws exist in many countries, such as France, Ireland, Hungary, Slovakia, Slovenia, Sweden, the United Kingdom and the United States. The trend toward greater legal whistleblower protection is ongoing, with bills pending in several countries and the EU exploring adoption of region-wide whistleblower protection. Some laws require or strongly recommend the adoption of effective internal reporting mechanisms. It therefore benefits private-sector organisations to comply or stay ahead of the curve by adopting such mechanisms to address misconduct effectively and protect people who, in good faith, speak up internally.

“We have to look into some ‘false alarms’ received through the hotline, but we believe that even if only 2 per cent of instances are ‘real’, the extra work is worth it. A recent hotline call resulted in a voluntary disclosure that would have been treated much more severely by the government agency had it been discovered or reported externally.”

– Senior Counsel for a US multinational⁹

8. Control Risks, *International Business Attitudes Toward Corruption*, Survey, 2015/2016, p. 20

9. Trace International, ISIS Management, IBLF, First to Know – *Robust Internal Reporting Programs*, 2004, p. 29

3. PREVENTION AND MITIGATION OF FINANCIAL LOSSES

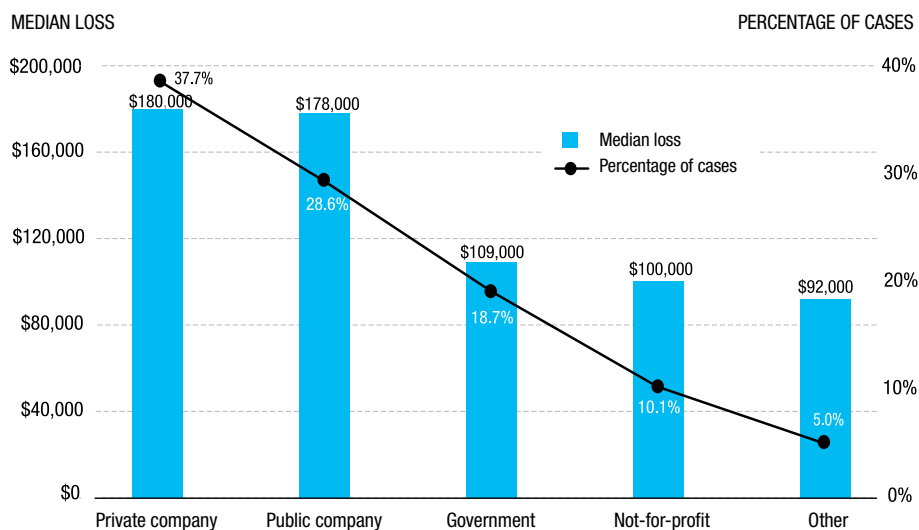
Beside mitigating losses resulting from liability such as civil or criminal fines, organisations can also benefit from the prevention or mitigation of financial losses that result from the many different types of fraud.

A 2016 report by the Association of Certified Fraud Examiners (ACFE) found that in more than 2,400 cases of fraud in 114 countries, around 40 per cent were uncovered through tip-offs. But organisations with reporting hotlines in place were much more likely to detect fraud through tip-offs than organisations without hotlines (47.3 per cent compared to 28.2 per cent, respectively).

The ACFE also found that the presence of anti-fraud controls was correlated with lower losses and quicker fraud detection. In particular, the existence of hotlines resulted in 50 per cent loss reduction.¹⁰

Two-thirds of the cases reported to the Association of Certified Fraud Examiners involved private and public companies. Such organisations also suffered the greatest median losses from fraud (US\$180,000 and US\$178,000 per case, respectively).¹¹

Figure 1: Type of victim organisation – Frequency and median loss

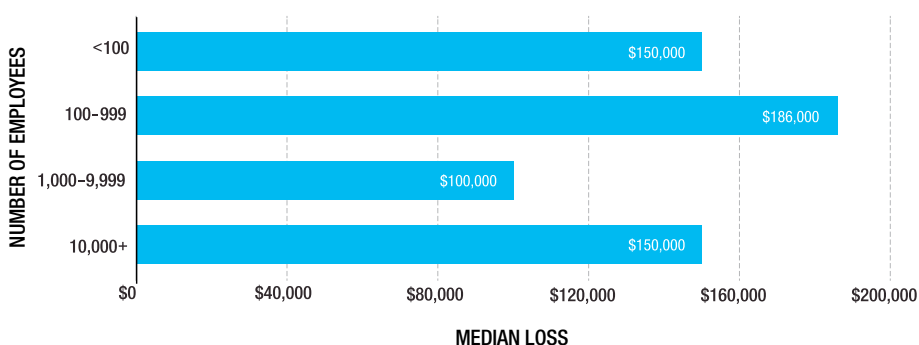


Source: ACFE, 2016

10. ACFE, 2016, p. 43-45

11. ACFE, 2016, p. 30

Figure 2: Size of victim organisation—Median loss



Source: ACFE, 2016

Small organisations (with fewer than 100 employees) suffer the same median loss per fraud case as the largest organisations (with more than 10,000 employees). Such loss is harmful to large organisations, but can be devastating for smaller ones.

Deterrence of misconduct is an additional benefit. Knowledge that a reporting mechanism is in place can prevent fraud or other financial harm by making individuals refrain from such conduct through fear of being discovered and reported.¹²

4. CONTINUOUS IMPROVEMENT IN COMPLIANCE AND RISK MANAGEMENT

Gathering information on the issues raised through an internal reporting mechanism enables organisations to detect patterns and make improvements in their policies and procedures to prevent future problems. It also allows leaders to identify where more resources are needed to reduce risk exposure. Many organisations use “sanitised and anonymised” incidents as learning tools to train employees to detect and address problems ethically and in accordance with laws and organisational policies.

“Through reports, we detected situations related to hierarchical relationships that could have led to problems and we therefore developed a policy that addresses potential conflicts of interest in career management related decision-making processes inside the company”

– Head of Ethics and Compliance, European company

12. Although it is difficult to measure the deterrent effect of internal reporting mechanisms, according to research conducted by the University of Iowa, in companies where financial fraud was committed and reported, fewer incidents of financial fraud occurred afterwards (Jaron H. Wilde, “The Deterrent Effect of Employee Whistleblowing on Firms’ Financial Misreporting and Tax Aggressiveness”, *The Accounting Review* (in Press)). Fraud prevention experts also state that knowledge that an employee hotline is in place can help prevent fraud, because individuals may fear that a fraud will be discovered and reported. (The Institute of Internal Auditors, the American Institute of Certified Public Accountant, ACFE, *Managing the Business Risk of Fraud: A Practical Guide*, p. 35).

5. STRONG REPUTATION

Protecting a brand from reputational damage is a key private-sector concern. An ethical breach or legal violation can destroy an organisation's good name and provoke severe consequences, including loss of customers, poor recruitment, low staff morale, lower investment or funding, and lost profits. By creating an environment conducive to internal reporting to detect potential misconduct, leaders can prevent or mitigate the reputational damage that may ensue.

"To protect a company's brand and reputation, information has to be able to flow immediately to a sufficiently high level of the organization. One way to guarantee this is by having a consistently open line of contact between an ethics officer and senior management. If you don't have a communication structure that allows concerns to become known, then build one."

– Forbes Magazine¹³

6. ENHANCEMENT OF ORGANISATIONAL CULTURE

Backed by sufficient encouragement from corporate leaders to speak up about misconduct, internal reporting mechanisms can build an organisational culture of openness, trust and integrity. Such a culture can be nurtured by encouraging employees to communicate with ethics and compliance experts, who can provide guidance and advice on specific questions and engage proactively with employees on topics of integrity. Other factors include training that encourages dialogue (such as small group workshops), messaging from the top leadership emphasising that disclosures are good for the organisation and the public interest, and – most importantly – corporate responsiveness to concerns and reports of misconduct.

"Every company should have developed whistleblower mechanisms. The system is effective: we are solving cases and our acceptance of criticism creates transparency and openness. Our responsiveness creates trust that we will solve the cases effectively. When you introduce the whole system – especially to newcomers – it benefits the company culture."

– Mgr. Zuzana Šimková
Senior Compliance Specialist, T-Mobile Czech Republic

13. Alexander F. Brigham, Stephan Linssen, "Your Brand Reputational Value Is Irreplaceable. Protect It!" Forbes Magazine, 1 February 2010

"INTERNAL REPORTING MECHANISMS CLEARLY PROVIDE REAL AND HIGHLY VALUABLE BENEFITS TO ORGANISATIONS OF ALL TYPES AND SIZES. BUT ONLY WHEN THEY TRULY COMMIT TO ADOPTING ROBUST, EFFECTIVE MECHANISMS WILL THEY BE ABLE TO REAP THE BENEFITS."

"If governed in an independent and disciplined manner, an effective reporting channel demonstrates a company's commitment to operating with integrity and to ensuring compliance with its policies and the law. It also protects corporate reputation, drives brand loyalty, and emphasizes that operational successes and competitive differentiation are born from an organisation demanding exceptional ethical standards."

– Adrian D. Mebane, VP, Deputy General Counsel, The Hershey Company

FAQs

How costly is adoption of an internal reporting system?

Internal whistleblowing programmes save money. A comprehensive internal reporting mechanism, including adequate training and human and financial resources, does require investment. However, it is likely that the costs of adopting internal reporting mechanisms will be offset by the revelation of valuable information much sooner than would otherwise have been the case. This was the experience of most of the 30 companies interviewed in a 2004 study on the benefits of internal reporting mechanisms.¹⁴

An increasing number of professional service providers and non-profit organisations offer a wide range of expertise, often at lower cost. Some Transparency International Chapters, for example, provide third-party reporting services through which organisations' employees and stakeholders can report to them directly.¹⁵ Many Transparency International chapters also advise individual organisations on implementing or strengthening internal reporting mechanisms, and discuss the benefits of strong internal compliance mechanisms and best practices with private-sector organisations through their Business Integrity Forums or special initiatives.¹⁶

Numerous organisations are exploring ways of measuring the return on investment of robust compliance programmes, which include internal reporting mechanisms. Hard gains, such as penalties avoided in an incident detected early or lower levels of fraud, may be measurable, but many other real benefits are not as quantifiable. These include employee retention, continuous improvement of policies and procedures, better training, more effective and efficient audits, improved employee morale and increased brand value. Most if not all organisations which have adopted reporting mechanisms agree that these benefits translate into significant financial gain.

"A whistleblower hotline is probably the easiest and least expensive means available to improve corporate governance. Waste, fraud, and the abuse of authority can all be combated by having an independent reporting mechanism that uses employees to report malfeasance."

– Fulcrum Inquiry¹⁷

Can an internal reporting system be effectively implemented across different countries?

Transparency International's Anti-Corruption Helpdesk analysed the challenges and solutions for multinational enterprises seeking to implement whistleblowing procedures in different locations of operation.¹⁸ Many best practice recommendations address this challenge. Companies can also consult professional service firms that provide ready-made solutions with global reach or with an understanding of local-level challenges, such as potential legal conflicts. Local non-governmental or non-profit organisations are increasingly providing a wide range of services relating to internal reporting mechanisms, including Transparency International chapters.

14. Trace International, ISIS Management, IBLF, 2004, p. 28.

15. Transparency International Romania, for example, created a Centre for Whistleblower Correspondence for the company Electrica. It receives internal reports of wrongdoing, protects the identity of the discloser, and guides and monitors the organisation's response.

16. See for example Transparency International Ireland's Integrity at Work initiative.

17. Fulcrum Inquiry, Best Practices in Whistleblower Systems webpage.

18. Transparency International Helpdesk Answer, "Best Practices and Challenges for Whistleblowing Systems in Multinational Companies," 19 September 2014.

Will stakeholders abuse the system with false or frivolous reports?

Research and anecdotal evidence demonstrate that trivial or untrue reports are uncommon. An organisation's policies can include sanctions against employees who abuse the system by making reports they know to be false. These policies should be implemented and monitored. An effective case management system will swiftly identify the veracity and urgency of reports.

“Although it is not unheard of for employees to invent falsehoods to defame another, anyone who has experience with a hotline knows that such calls are – thankfully – exceedingly rare.”

– Jim Brennan, VP and Chief Ethics Officer, Reyes Holdings¹⁹

How can an effective case management system be implemented?

An effective and responsive case management system is an essential component of a reporting mechanism. However, several surveys report that even large multinational companies still lack adequate processes for addressing complaints of retaliation. Every organisation should have a formal policy against retaliation for reports of misconduct made in good faith, and for participating in investigations. If retaliation is alleged, there should be clear and effective procedures for investigating and addressing it.²⁰ This is especially important in view of the Ethics and Compliance Initiative (ECI) Survey, which explored worker experiences in both public- and private-sector organisations in 13 countries. It found that 22 per cent of workers felt pressure to compromise organisational standards, and 33 per cent observed misconduct in the workplace. Of these, 59 per cent reported the misconduct, and 36 per cent of them experienced retaliation.²¹

There is much guidance on how to set up an effective case management system – an investment which will help protect the company from liability, reputational harm and financial losses. Case management methodology is based on clear criteria for:

- designation of recipients
- intake of reports and initial response
- preservation of confidentiality
- communicating with the discloser and other persons involved
- escalation protocols for reporting to senior personnel, the board or externally
- conducting the internal investigation.

A case management system should be customised to an organisation's units, functions and operations. For complex organisations in particular, early planning with guidance from case management experts and local counsel on legal and regulatory requirements is key to adopting an effective system.

“If responses languish, if allegations are not reviewed, if those making the allegations are not communicated with effectively, employees may quickly lose faith in their employer and turn to outsiders [...] when they see wrongdoing.”

– Society of Corporate Compliance and Ethics and the Health Care Compliance Association²²

19. “Having an Ethics Hotline is a Really, Really Bad Idea, (Really?)” The Ethics and Compliance Blog, 14 December, 2015

20. A survey conducted in the EU on “speak up” channels found that although the vast majority of organisations (90 per cent) said they did have policies or principles to encourage non-retaliation against whistleblowers, less than 28 per cent admitted to having a process to monitor this (Le Cercle d’Ethique des Affaires, Foretica and IBE, 2015)

21. Ethics and Compliance Initiative (ECI), *2016 Global Business Ethics Survey*, p. 4; see also UK research conducted by Public Concerns at Work (PCAW) which found that in most cases (52 per cent), the employer's response to the concern being raised was either to deny it (36 per cent) or to ignore it (16 per cent). Concerns were resolved in only 16 per cent of cases. PCAW also found that half the whistleblowers who contacted PCAW were dismissed (25 per cent) or had resigned (24 per cent) after raising their concern, and only 7 per cent reported that there were no consequences to their having raised their concerns. (PCAW, *The UK Whistleblowing Report*, 2014).

22. Society of Corporate Compliance and Ethics and the Health Care Compliance Association, “Helpline Calls and Incident Reports”, April 2014, p. 9

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