Effective Speak Up arrangements as part of an ethics programme are an important element of good corporate governance. Malpractice can severely damage company reputation if not dealt with at an early stage, yet may go undetected unless arrangements are in place for concerns to be reported.

This briefing reviews current Speak Up practice and regulatory developments in the UK, with brief reference to Europe and the USA.

Introduction

It is now generally accepted by many businesses that employees (and other stakeholders) need a means by which to raise their concerns about unethical, unsafe or unlawful practices. ‘Employees being able to speak out about company wrong doing’ consistently ranks highly on list of business ethics issues which the British public feel companies need to address\(^1\). The systems that organisations have in place to deal with such concerns are given a variety of names, with many terms used interchangeably: Whistleblowing, Speak Up, OpenTalk (BP), Rightcall (Aviva), or even Open Door Policy (Pfizer).

Employees need to know how and where to obtain guidance on what is expected in terms of the way the business of their organisation should be done. Effective Speak Up arrangements facilitate the creation of an open and transparent culture, where employees have the confidence to speak out about issues that concern them. Through early detection and prevention of misconduct organisations are often able to operate with high ethical standards and avoid integrity risks.

Having an effective Speak Up programme has several benefits for organisations: the Association of Certified Fraud Examiners report that whistleblowing is one of the most effective ways to uncover fraud\(^2\); the Ministry of Justice includes these hotlines as a key prevention procedure in its guidance on the Bribery Act; and the Combined Code on Corporate Governance obliges companies listed in the UK to have whistleblowing arrangements or explain why not\(^3\).

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2. In a 2012 report ACFE found that 50.9% of reported fraud within organisations was identified by tip-offs from employees or contractors. *2012 Global Fraud Study*, ACFE
3. *Forewarned is forearmed? So why don’t more businesses encourage whistleblowers?* GoodCorporation, 2013. Accessed 28/01/14
The UK

According to Transparency International’s (TI) analysis of legal protections for whistleblowers in the EU\(^4\), the UK is one of only four countries in the EU to be rated as having ‘advanced’ provisions and procedures in place to protect individuals who report illegal or unethical practice. The cornerstone of this is the Public Interest and Disclosure Act 1998 (PIDA), which is considered to be amongst the best whistleblower protection laws in the world. PIDA makes it unlawful for an employer to dismiss or victimise a worker for having made a ‘protected disclosure’. A protected disclosure is one which, in the reasonable belief of the worker, is in the public interest\(^5\), and addresses one or more of a number of listed ‘wrongdoings’: criminal offences; failure to comply with legal obligations; miscarriages of justice; dangers to health or safety; dangers to the environment; or deliberate concealment of any of the above categories\(^6\). PIDA has served as a template for the whistleblower protection laws in a number of other countries including Ireland, Japan and Australia.

However, PIDA is viewed by some as not giving sufficient protection to whistleblowers. Cases continue where those who speak up have suffered, such as being dismissed or ostracised by colleagues. Recently both TI and Public Concern at Work (PCaW), a UK whistleblowing charity, have made recommendations on improving it.

In November 2013 PCaW published the report of its Whistleblowing Commission\(^7\) on the effectiveness of existing arrangements for workplace whistleblowing in the UK, making 25 recommendations. Most significant are the recommendations to: introduce a code of practice for whistleblowing arrangements (a draft of which is included in the report); adopt a clear procedure for dealing with whistleblowers, which includes the provision of feedback; improve the reporting/publishing of whistleblowing data; expand PIDA to cover overseas workers raising concerns about UK employers and their subsidiaries.

Europe

After the introduction of PIDA, a wave of legislation followed throughout Europe. However, the protection offered to whistleblowers throughout the 27 member states of the EU varies significantly\(^8\). The majority of countries (16 of 27) have partial protection, and there are seven countries with no or very limited protection (see Table 1).

For example:
- Luxembourg is one of the few European countries to adopt the ‘reverse burden-of-proof’ as per PIDA.
- Romania became the first country in Continental Europe to pass a law (2004) dedicated to Speak Up, with the Whistleblower Protection Act which covers government employees.
- In 2001, the Netherlands approved protections for public servants, and has since introduced a number of further measures including an Ethics and Integrity Agency, an expansion of the National Obudsman Office, and a Whistleblowing Advice Centre.

\(^4\) Whistleblowing in Europe Legal Protections for Whistleblowers in the EU, Transparency International. November 2013
\(^5\) In 2013 a ‘public interest’ test was added to the definition of a protected disclosure, replacing the previous requirement for disclosures to be made ‘in good faith’. Consequently, even if a disclosure is now made in ‘bad faith’, the individual who raises the complaint is still protected, although the compensation they can receive will be decreased
\(^6\) As set out in section 43B of the Public Interest Disclosure Act 1998
\(^8\) ibid fn[4]
The USA

The United States has several whistleblower protection laws in place, including the False Claims Act – which covers whistleblowers with evidence of fraud against the government; the Sarbanes-Oxley Act – which applies to employees of publicly traded companies; and the Dodd-Frank Act – which established a new category of whistleblowers being "those who give the Securities Exchange

Throughout a number of European countries being labelled a whistleblower may carry with it associations of being a ‘tattletale’ or other negative words from childhood. See Box 1 for a summary of TI’s analysis of how the term whistleblower is “lost in translation”. Similarly in the UK, a Comres survey in 2012 suggested that less than half of UK respondents (47%) thought whistleblowing was an acceptable thing to do in our society. However, a YouGov survey commissioned by Public Concern at Work (PCaW) in 2013 revealed that “the overwhelming majority of British workers (72%) view the term whistleblower as positive or neutral”.

**Table 1: Level of Whistleblower protection in EU Member Countries**

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<th>ADVANCED</th>
<th>PARTIAL</th>
<th>NONE OR VERY LIMITED</th>
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<td>A country’s existing laws include comprehensive or near-comprehensive provisions and procedures for whistleblowers in the public and/or private sectors.</td>
<td>A country’s existing laws include partial provisions and procedures for whistleblowers in the public and/or private sectors.</td>
<td>A country’s existing laws include no or very limited provisions and procedures for whistleblowers in the public and/or private sectors.</td>
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Source: Whistleblowing in Europe Legal Protections for Whistleblowers in the EU. ibid fn[4]

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**Box 1: Lost in translation**

Below are a few commonly used equivalent translations of ‘whistleblower’ from throughout the EU, including any connotations they may carry.

**Czech:** oznamovatel – reporter – neutral; práškač – snitch – negative.

**German:** Denunziant – squealer, tattletale – negative; Hinweisgeber – hint-giver – neutral; Nestbeschmutzer – one who dirties their own nest – negative.

**Italian:** sentinella civica – civic sentinel – positive; segnalante – reporting person – neutral; talpa – mole (spy) – negative; corvo – crow – negative; delatore – leaker – very negative.

**Latvian:** ziĦotājs – denouncer – negative; Trauksmes cēlējs – alarm-setter – neutral.

Source: Whistleblowing in Europe - Legal Protections for Whistleblowers in the EU, Transparency International

**The USA**

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**Commission (SEC) “original information”**13.

Additionally, in the US both the Dodd Frank Act and the False Claims Act offer financial incentives to encourage individuals to speak up. Under the Dodd Frank Act, eligible individuals who voluntarily provide original information, resulting in monetary sanctions of over $1,000,000 to the employer, are typically remunerated with between 15%-30% of monies recovered in enforcement actions14. To date the largest payout to an individual stands at over $14 million15.

A similar system is currently under consideration in the UK. The Home Office is conducting further research which they plan to report on in 2014. The Whistleblowing Commission report recommends that financial rewards or incentives for whistleblowing not be introduced16.

**Corporate Practice**

The IBE Good Practice Guide Speak Up Procedures17 outlines the benefits of having a Speak Up programme which is run in an open and transparent manner. These include: good risk management; maintenance and improvement of performance; protection of staff, customers and the public; reduction of financial losses; and improvement of staff morale and reduction of staff turnover.

86% of FTSE350 respondents to the 2013 IBE survey of Corporate Ethics Policies and Programmes listed a Speak Up Line for reporting misconduct as one of the main elements of their company’s ethics programme. All respondents said that they have a formal mechanism for employees to raise ethical concerns confidentially18. Expolink, a hotline provider, report that between 2009 and 2013 there has been a sharp increase in the number of Speak Up reports raised online, though a phone line remains the most common method for reporting a concern19.

**Speak Up Metrics**

Among its subscriber companies, the IBE has found that, over recent years, the number of reports to corporate Speak Up hotlines is generally increasing20. A similar trend is also reported by the Financial Conduct Authority (FCA) which saw a 72% increase in the number of investigations into the conduct of regulated financial companies opened as a result of a tip-off from a whistleblower21.

However, Expolink’s sector analysis of the number of reports to hotlines over the last 24 months shows that not all industries have experienced such an increase. See Box 2.

Increased use of Speak Up mechanisms is generally considered to be a ‘good thing’, with several organisations using this as a metric for the effectiveness of, and confidence in, their Speak Up process. It also allows more concerns to be identified before they become serious. Other data commonly used to assess this are responses to staff surveys, which help to gauge employee awareness and confidence of an organisation’s Speak Up programme and policies.

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13 Global Guide to Whistleblowing Programs, World Law Group, 2012
16 See page 14 of the report for a list of the reasons received during the consultation. ibid fn[7]
17 Available to purchase from http://www.ibe.org.uk/list-of-publications/67/47/, accessed 28/01/14
18 Corporate Ethics Policies and Programmes 2013 UK and Continental European Survey, Institute of Business Ethics
20 IBE survey of Corporate Subscribers, December 2013
21 Whistleblower tip-offs soar in the UK, The FT. Accessed 02/01/14
Companies make use of the data collected through their Speak Up lines in several ways. Internally, some organisations provide regular reports to the board and executive committee, as well as publicising some information in company newsletters. At its most basic, the information that is shared is the raw data concerning the number of reports raised and classified by category. Some organisations also provide a breakdown of the results by country. Others benchmark the number of reports as a percentage of the total workforce (see **Box 3**).

This information can also be fed into risk management systems, as indicated by one respondent to a recent IBE survey:

“The Internal Audit Department makes a Quarterly Whistleblowing Report which includes all open whistleblowing reports filed in the relevant quarter as well as those proposed for dismissal regarding reports received in the same quarter and/or remaining from previous periods. The “Quarterly Whistleblowing Report” is reviewed and approved by Company’s Board of Statutory Auditors; the latter will approve the proposals for dismissal contained in the Report, or, where necessary, will request Internal Audit Department to carry out further investigations or to activate a spot audit. The report is sent: to Chairman of the Board of Directors; to Chief Executive Officer; to Board of Statutory Auditors; to Independent Auditors. The Board of Statutory Auditors, during its review of the quarterly whistleblowing report, will evaluate whether to send to the Internal Control and Risk Committee (as a part of the Board of Directors) any whistleblowing files considered relevant for its impact on the Internal Control System.”

(Continued on page 6)
Additionally, some organisations are reporting highlights of this information publically, in their CR or Annual Reports. **Box 4** gives examples of how two IBE subscribers are reporting externally on Speak Up data. Reporting in this way provides evidence that the company had procedures in place which are actually used and are effective in managing ethical misconduct.

**Box 4: External reporting of Speak Up data**

**BP**

*In 2012, 1,295 cases were raised through OpenTalk, with the most common issues relating to the people section of the code. This compares with 796 cases in 2011. In 2012, our businesses reported 424 dismissals for non-compliance or unethical behaviour, compared with 529 in 2011. In 2012, our businesses reported that six suppliers’ contracts were either terminated or not renewed, compared to 14 in 2011.*

Source: [BP Sustainability Review 2012](#)

**Diageo**

*There were 743 suspected breaches reported this year, compared with 601 in 2012, of which 376 were subsequently substantiated compared with 388 last year. Of the suspected breaches, 242 were reported through SpeakUp, the same number as in 2012.... Given that overall the number of cases reported has gone up ... it is clear that more employees chose to report directly to their line manager, the legal team, or our controls, compliance and ethics managers.*

Source: [Diageo Sustainability & Responsibility Report 2013](#)

The Expolink Benchmarking Report reveals that the percentage of anonymous reports decreased from 75% in 2009 to 65% in 2013. This is attributed a number of factors including: ‘increased employee confidence in the Speak Up process’; ‘how the process is presented by organisations’; ‘better protection for whistleblowers’; ‘changes in corporate culture’; and ‘socio-cultural shifts’.

**Challenges**

15 years after PIDA was introduced, encouraging employees to raise concerns remains a challenge. According to the IBE Employee Views of Ethics at Work 2012 British Survey, whilst one in five British employees were aware of misconduct in their organisation in the preceding year, half of them (49%) did not report their concerns. Further, PCaW’s *Whistleblowing: the inside story*, which examined the experiences of 1,000 whistleblowers, revealed that 74% of whistleblowers said they were ignored when they first raised a concern. Finally, whilst most large companies have a formal mechanism where concerns can be voiced, PCaW report that less than half of UK employees are aware of a Speak Up policy in their workplace. Therefore, it is imperative that organisations raise awareness of their Speak Up programme on a continual basis, beyond merely posting guidance on the company intranet. A range of engagement methods are used for this purpose in companies including Speak Up specific training, posters, company newsletters, leadership blogs, team briefings and dedicated websites.

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23 ibid fn[19]
25 Whistleblowing: the inside story, PCaW. May 2013. Accessed 20/12/13
26 Silence in the city: whistleblowing in the financial services, PCaW and Slater & Gordon. Accessed 20/12/13
27 ibid fn[20]