

Blowing Corruption out of the Water

A synopsis of Kirsten Trott's presentation to the International Anti-Corruption Conference, 20-21 February 2006 in Cologne, Germany.

Whistleblowing - [a] Bringing an activity to a sharp conclusion as if by the blast of a whistle (Oxford English Dictionary); [b] Raising a concern about malpractice within an organisation or through an independent structure associated with it (UK Committee on Standards in Public Life); [c] Giving information (usually to the authorities) about illegal or underhand practices (Chambers Dictionary); [d] Exposing to the press a malpractice or cover-up in a business or government office (US, Brewers Dictionary); [e] (origins) Police officer summoning public help to apprehend a criminal; referee stopping play after a foul in football.

This paper briefly sets out issues to be explored in my presentation at the conference. It considers the role whistleblowing might play in the fight against corruption. Specifically, it looks at:

- a) is it desirable that the whistle is blown?
- b) What are the elements of the culture necessary for whistleblowing to be an effective anti-corruption tool?

In regards to bribery and corruption there are two types of informers, one who is implicated or has participated in the giving or receiving of the bribe (a collaborator) and the innocent third party who has witnessed some part of the corrupt act or sees evidence to suggest it, (a whistleblower). Whilst globally the authorities welcome and protect collaborators through witness protection and plea bargaining, whistleblowers rarely receive the same level of help or protection. To rely on one of the collaborators i.e. wrongdoers to 'see the light' and to provide the evidence which will allow the law to be enforced is at best optimistic and at worst risks undermining the role of citizens in society. Whistleblowers must be enabled and encouraged to speak up when they witness corruption.

Whistleblowing is relevant to all organisations, not just those few who are corrupt or criminal. This is because every business and every public body faces the risk of things going wrong or of unknowingly harbouring a corrupt individual. Where such a risk arises, usually the first people to realise or suspect the wrongdoing will be those who work in or with the organisation. Yet these people, who are best placed to sound the alarm or blow the whistle, also have the most to lose if they do.

One way of protecting whistleblowers is through introducing whistleblower protection legislation, which is becoming increasing common globally as part of an anti-corruption regime. Effective whistleblowing legislation requires a strong rule of law and a free media. More important than any successful claims under such legislation, is its declaratory effect, which signals and promotes a change in the culture.

A whistleblowing-friendly culture primarily seeks to enable concerns about corruption and wrongdoing to be properly raised and addressed in the workplace or with the person responsible. It starts from the assumption that malicious and aggrieved people already make damaging disclosures regardless of the culture. Accordingly, a pro-whistleblowing culture is concerned with the silent majority who think it is not in their interests to blow the whistle on corruption or serious wrongdoing. Drawing on the theory of efficient markets (that competitive forces begin to operate once one quarter of consumers will consider switching suppliers), it assumes that organisations and societies will deter and detect corruption and wrongdoing if a significant minority of those who now stay silent can be encouraged to see internal whistleblowing as a viable, safe and accepted option.

The main beneficiaries of a culture which disapproves and penalises people who blow the whistle in good faith are those few corrupt firms and individuals. Knowing that the alarm will not be sounded, they are confident that their wrongdoing (especially if it is corruption or bribery) will go undetected and unpunished. Where a culture of secrecy and silence exists, otherwise reasonable

people may be tempted to engage in malpractice because they believe they will not be caught. Equally in such a secret culture, normally responsible organisations may feel they will be at a competitive disadvantage if they do not also pay bribes or engage in illegal practices. Conversely, a whistleblowing friendly culture means the majority is deterred from engaging in malpractice as the likelihood of being caught increases.

The UK approach is based on a 3 tier whistleblowing system. The first tier is that concerns should be raised internally, within the organization. Improving the culture and transparency of the workplace is vital for this to be a realistic option as without a whistleblowing friendly workplace culture, workers will assume that they risk victimisation, losing their job or damaging their career if they report corruption. For an employer - whether a business, government or NGO - a whistleblowing friendly culture can provide the information needed to stop the wrong doing. This enables reputational damage to be minimized and accountability demonstrated, thus strengthening the organization's position with regards to authorities, partners, funders, the courts and the public.

To foster such a culture, an organisation must:

- Send a strong signal from the very top of the organisation that it is against corruption and is resolved to go about its business lawfully.
- Set out a clear and accepted route for concerns to be raised inside and outside of the organisation;
- Provide and deliver on assurances against reprisals for whistleblowers (even where mistaken, provided he or she acted honestly and reasonably).
- Direct the worker toward seeking impartial advice.
- Train management on handling concerns and encourage management to solicit concerns
- Deal with concerns raised properly and demonstrate accountability.

The second step is that concerns can be raised with a designated authority (e.g. a regulator or ombudsman) where there is good evidence to support the concern. This reinforces the workplace culture, reassuring the whistleblower that the matter can safely be raised internally, encouraging managers to deal properly with concerns about corruption and enabling those managers to be accountable for their actions. It also provides a safety net for when concerns are not properly dealt with or workers feel that they cannot raise it within the workplace.

If such a culture is to maintain the confidence of the wider community, society needs to address the particular circumstances in which a wider disclosure may be justified. Essentially this should be an option of last resort and can, where reasonable, include a disclosure to the media. In cases of a flagrant cover-up or the failure by the authorities to deal with a serious issue effectively, this third step is essential.

By allowing the communication of corrupt behaviour, a whistleblowing culture enables the transparency and accountability required to combat corruption. In addition to making good sense, it is now an accepted part of governance¹. The challenge now is for corporations, governments and lobby groups to better understand whistleblowing and promote the culture necessary for it to blow corruption out of the water.

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¹ OECD: Principals of Corporate Governance, Guidelines on Multinational Enterprises and Anti Bribery Convention