Whistleblower Hotlines: New Regulations Make Headlines in Europe

Many organisations already see the value of incorporating a professionally developed and managed whistleblower hotline to reduce unethical and/or illegal behaviour among employees. With further regulatory changes continuing across Europe, especially within the UK and the Netherlands, these initiatives are getting even more attention than usual.

In the UK, the FCA and PRA have recently published policy statements (PRA PS24/15 and FCA PS15/24) to set out new whistleblowing proposals. These are designed to encourage a culture in which individuals can safely raise concerns, and challenge instances of poor practice and behaviour, without fear of retaliation. Under the new Senior Managers Regime relevant firms will be required to put in place, by the 7th March, internal whistleblowing arrangements capable of handling all types of disclosure.

In the Netherlands, the introduction of a new independent administrative body called the 'House for Whistleblowers' will establish rules to protect employees acting as whistleblowers. This new legislation, expected to be passed this year, will require all Dutch companies with 50 employees or more to have a compliant internal whistleblowing procedure in place.

Internationally, the U.S. Securities and Exchange Commission (SEC) has put the spotlight back on whistleblowers globally. A recent report shows over 70 claims from the UK alone were submitted to the SEC in 2014. This illustrates the strong global reach of the SEC but also underscores the importance for international organisations to have strong, compliant whistleblower programmes.

However, while these legislative changes have been making headlines across Europe, there has been comparatively little dialogue regarding what experts say is among the most critical - and certainly the most visible – element of the programme: the whistleblower hotline.

THE WHISTLEBLOWER HOTLINE: A COMPLEX CHALLENGE REQUIRES BEST PRACTICE

The purpose of an organisation’s Whistleblower Hotline programme is straightforward: to reduce employee misconduct and organisational risk by identifying and resolving allegations of ethics and compliance violations – as quickly and as efficiently as possible - while protecting whistleblowers against retaliation.

Complexity arises when considering the full scope of developing and implementing an effective whistleblower hotline with minimal internal personnel and financial resources. There are a number of key challenges that organisations have to navigate related to the systems, processes and technology by which alleged violations will be submitted, tracked, prioritised, investigated and – ultimately – resolved.

This white paper highlights 9 key challenges for implementing an effective whistleblower hotline and provides recommended best practices for addressing each one.
The 9 key challenges related to developing an effective and efficient Whistleblower Hotline for International Organisations:

1. It is essential that the Whistleblower Hotline be perceived as independent and credible
2. The Whistleblower Hotline must be universally accessible and user-friendly
3. Systems, tools and processes must enable accurate, intelligent tracking, reporting and decision-making
4. It is critical that data can be analysed to rapidly identify broader trends
5. The technology infrastructure must be secure, scalable and future-proofed
6. Potential whistleblowers need to be educated on when and how to use the Hotline
7. The Whistleblower Hotline must comply with various International regulations
8. The programme requires dedicated expertise in ethics and compliance, integration and programme management
9. The programme’s results and efficiency must be apparent to key stakeholders

CHALLENGE 1: It is essential that the Hotline be perceived as independent and credible

Best Practice: Ensure total confidence that the Hotline process is confidential and – if desired – anonymous.

- Calls should be answered by a live operator, as anonymous reporters will almost never leave voicemail messages.
- Reports and related information must be kept private and in a secure manner, whether or not a reporter prefers to remain anonymous.
- The system should assign Personal Identification Numbers (PINs), or other confidential identifiers, by which the organisation can communicate with anonymous whistleblowers to provide updates and ask follow-up questions. This process also allows an anonymous caller to identify him/herself to the organisation as an investigation progresses.

Best Practice: Prevent real or perceived conflicts of interest or fear of retaliation.

- Whistleblower hotline and incident management systems should be operated and overseen separately and independently from:
  » The organisations and individuals that are potential subjects of whistleblower complaints.
  » Individuals or departments within the organisation, or any third party, that have any interest in the organisations or individuals that are potential subjects of complaints.
  » Individuals or departments within the organisation, or any third party, that have any interest in the status or outcome of potential violations.

CHALLENGE 2: The Whistleblower Hotline must be universally accessible and user-friendly

Best Practice: Provide reporting channels that address how and when potential whistleblowers need to use the hotline.

- Provide multiple channels for reporting, such as; phone, mobile, web and in-person, to meet the capabilities and preferences of all potential whistleblowers.
- Provide 24x7x365 access to these channels. 50% of calls will come outside of business hours (due to concerns about privacy) and you will need to handle calls coming from international regions.

ABOUT THIS WHITEPAPER

This white paper focuses on (a) the range of complex and unique challenges and requirements related to developing, implementing and maintaining a whistleblower hotline and incident management system; and (b) the recommended best practices for addressing them.
Facilitate whistleblower reports from international audiences in multiple languages and ensure accessibility for international callers.

**Best Practice: Ensure the whistleblower hotline and related processes are highly functional as well as easy-to-use and understand.**

- Provide user-friendly web interfaces.
- Use customised scripting for telephone channels tailored to the type and source of allegation as well as to the type of business (i.e. public company vs. private vs. academic, etc.). Scripts should be administered by trained ethics and compliance professionals.

**Best Practice: Assure users that complaints will be handled professionally and efficiently.**

- Use professional, skilled interviewers who are trained on the questions that will elicit the details needed for appropriate follow-up actions.
- Integrate your systems and processes to track the status of each report no matter what channel is used.
- Ensure your systems have processes in place to provide timely feedback and updates.
- Make sure a clear follow-up process is communicated to reporters.

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**CHALLENGE 3: Systems, tools and processes must enable accurate, intelligent tracking, reporting and decision-making**

**Best Practice: Implement proven processes to handle a wide range of situations.**

- Key processes include handling and tracking of reports via multiple channels (phone, mobile, web, in-person); analysing trends to identify broader issues or process breakdowns; and hand-offs between hotline staff and oversight/investigation teams.
- Hotlines, reporting and data handling must meet regulatory requirements that may differ depending on company division and country in which the report originates or where the alleged activity occurred.
- Establish escalation policies and procedures for time-sensitive issues: what topics, what characteristics, criteria should be prioritised.
- Develop dedicated processes for handling anonymous reporters, including a unique, confidential coding system.

**Best Practice: Implement integrated, streamlined incident management capabilities.**

- When selecting any automated, software-based incident management system, make sure it includes workflow automation and process controls to enable consistent and thorough documentation and the investigation of policy and procedure issues, violations and concerns.
- Ensure you have a direct entry method for tracking issues reported by means other than the hotline (e.g. Open Door Policy), for complete and centralised management of issues.
- Provide mobile case management for anytime, anywhere access to reporters.
- Make sure you can provide real-time and historic analytics, including robust tracking, reporting and trending issues, with summary – and detail-level information.

**Best Practice: Provide intelligent data collection.**

- Complex whistleblower reports will require live interaction by professionally trained personnel.
- This enables probing to ensure informed questions are asked and proper information is collected.
- Custom scripting addresses situations unique to the organisation and the industry in which it operates.
**CHALLENGE 4:** It is critical that data can be analysed rapidly to identify broader trends

**Best Practice:** Generate reports and analytics that yield useful, comprehensive management insight.

- Establish a capability for automated, on-demand and online reporting tools that are integrated with your whistleblowing hotline and incident management systems.
- Undertake regular trend analysis to detect widespread or repetitive issues in real-time.
- Provide a centralised database for distributed organisations.
- Ensure the ability to provide on-demand holistic views by office, region, category, etc.

**CHALLENGE 5:** The technology infrastructure must be secure, scalable and future-proofed

**Best Practice:** Robust, secure, compliant and scalable technology infrastructure.

- Systems, infrastructure and processes designed with an emphasis on security and privacy, including:
  - SAS 70 Type II and ISO 27001 Certification.
  - Safe Harbor Certification that incorporates the European Commission’s Standard Contractual Clauses (sometimes referred to as model clauses) for the provider and all translation vendors.
  - Independent security and vulnerability assessments.
  - Software-as-a-Service (SaaS) model ensures that new versions and updates will be centrally deployed and not drain organisational resources.
  - Call and data routing and handling, management and storage systems and platforms that can quickly and cost-effectively scale as needed to meet demand.

**CHALLENGE 6:** Potential whistleblowers need to be educated on when and how to use the Hotline

**Best Practice:** Launch and create awareness of the whistleblower hotline.

- Create a custom, multi-channel campaign to raise initial awareness.
- Develop ongoing educational campaigns to boost and maintain mindshare.
- Create materials in multiple languages for international audiences.

**Best Practice:** Educate audience on when and how to use the whistleblower hotline.

- Develop materials to explain what the hotline does and does not cover.
- Reinforce the independence and discretion that is built into the programme.
- Create materials in multiple languages for international audiences.

**CHALLENGE 7:** The Whistleblowing Hotline must comply with all international regulations

**Best Practice:** Meet laws and standards in all relevant jurisdictions.

- Operate an EU compliant data centre to ensure you are meeting all data privacy and other EU specific requirements.
- Ensure design and functionality of the Hotline intake, and the Incident Management processes, access and retention policies support all regulatory requirements, i.e. the ability to limit allegation reporting, minimise distribution of reports and “sanitise” information to comply with data privacy requirements.
- Follow and maintain compliance with changing regulations on a country-by-country basis, including CNIL (France), APD/LOPD (Spain), UK Bribery Act (UK), House for Whistleblowers (NL), etc.
CHALLENGE 8: The programme requires dedicated expertise in ethics and compliance, integration and programme management

Best Practice: Acquire access to dedicated people and expertise.

- Start by defining the overall business and operational ownership responsibilities of the whistleblower programme in addition to the key elements of the programme.
- Determine the types of middle management, supervisory and front-line staff needed to implement and maintain the whistleblower hotline.
- Develop a plan for acquiring and maintaining (training) the teams needed to properly handle reports, manage the investigation process, analyse trends and make key decisions.

Best Practice: Undertake comprehensive and integrated strategy and planning.

- Define the types of allegations that should and might be covered by the Whistleblower Hotline programme and the multiple jurisdictions in which it will operate.
- Define potential whistleblowers and where they may be located.
- Gauge and prioritise potential whistleblowers’ needs and concerns (i.e. confidentiality/privacy).
- Develop a plan for integrating the hotline into other existing business processes – what will it complement or replace?
- Profile the users/administrators and define how they will interact with the hotline systems.
- Determine and prioritise the requirements/scope of the whistleblower hotline (i.e. should it operate during working days only or 24x7x365?).

CHALLENGE 9: The programme’s results and efficiency must be apparent to stakeholders

Best Practice: Provide real-time visibility into key trends by allegation type and organisation.

- Provide executive-level and board-level reporting and analysis that enables strategic assessment and diagnosis of the Whistleblower Programme’s performance and trajectory.
- Generate on-demand reports that enable the organisation to spot trends before they result in larger problems that are visible to the general public.
- Deliver analysis that shows bottom line reduction in misconduct.

SOURCING CONSIDERATIONS FOR THE WHISTLEBLOWER HOTLINE

A Third Party Helps Establish the Programme’s Independence and Credibility

There is a singularly unique aspect of a whistleblower hotline that is, in itself, a reason to strongly consider selecting an expert third-party source to develop and maintain it:

External management of the organisation’s whistleblower hotline ensures – both in practice and perception – that the entire process is separate from and independent of any potential conflicts. This independence will, in turn, encourage a potential whistleblower to contact the organisation regarding suspected ethics and compliance misconduct.

Managing the Programme’s Overall Complexity

There is a degree of complexity involved in developing, deploying and managing the type of whistleblower hotline and incident management system required by an organisation, from multi-lingual phone support to customised incident management workflows to intelligent reporting and analytical tools.
Simply put, the vast majority of organisations, whether in the public, private or government sector, are not equipped to, nor can they justify building and integrating the individual elements – people, processes and technology – to meet the requirements of an initiative such as a Whistleblower Programme.

While there are numerous companies that provide general outsourcing services – from government contractors to call centre operators to business process outsourcing firms – there is a small sub-set of ultra-specialised firms that can meet the complex and varied requirements described above.

These specialised firms have dedicated whistleblower hotline, incident management and reporting solutions and services – with expert consultants and staff to help develop the appropriate strategy and plan for an organisation’s Whistleblower Hotline and Incident Management system.

Performance, Privacy and Compliance Factors Related to Outsourcing

The specialised purpose and function of an effective whistleblower hotline and incident management system translates into highly specialised requirements in areas such as:

- **Delivery against service levels** - Most organisations find it too labour-intensive to staff and operate the whistleblower hotline and incident management system 24 x 7 x 365 to accommodate calls outside of business hours, from international locations and in multiple languages.

- **Ability to properly train** - Continually hiring and training personnel to staff the hotline and perform incident management functions is complex and costly – and better suited to a specialised third party.

- **Efficient call and data routing and handling** - Sophisticated software and processes are required to automate workflows and ensure the entire system performs accurately and will scale to meet demand.

- **Ensuring security and privacy** - The systems, infrastructure and processes required to handle and store information in a secure and private manner mandates specialised expertise and processes typically not found outside of specialised service providers.

- **Maintaining international compliance** - In most cases the expertise and cost of complying with multiple and frequently changing regulations and guidelines - nationally and internationally – cannot be justified by sourcing in-house.

Cost Implications of Sourcing Decision

There are significant considerations regarding cost and cost-effectiveness required for the overall design, development and maintenance of a whistleblower hotline and incident management system. Typically, a single organisation cannot justify the high costs of building or acquiring the necessary components – people, processes and technology – and integrating them. Considerations include:

- **Up-front Investment.** An in-house hotline means devoting capital to purchasing or developing technology, software and systems as well as other expenses such as facilities and full-time staff.

- **Future-Proofing Technology.** Software, hardware and other system components require upgrading and updating over time so that they do not become obsolete relative to the overall needs of the programme.

- **Budgeting Predictability.** The variable month-to-month and quarter-to-quarter expenses associated with managing a whistleblower hotline and incident management system can present challenges to budgeting and planning processes.
In Summary

The integrated whistleblower hotline and incident management components are the employee facing “front end” of any Whistleblower Programme. As such, their proper implementation and management will determine how the programme is perceived by potential whistleblowers and other key stakeholders. The whistleblower hotline will also largely conclude how effective and efficient the programme is in meeting its overall objectives.

In planning, developing, implementing and managing its Whistleblower Programme to achieve its core goals for risk reduction, an organisation must take into account several key factors:

- It is critical to both the performance and perception of the Whistleblower Programme that reports are handled in an independent and confidential manner.
- The range and depth of requirements translates into a high degree of complexity for the organisation to plan, implement and maintain the people, processes and technology behind a successful whistleblower hotline and incident management initiatives.
- The development and maintenance of the programme, including the necessary specialised expertise, processes and technology, carries a significant cost – as well as a very high risk of obsolescence.

Based on these factors, the organisation must decide whether to manage the whistleblower hotline and incident management elements of its Whistleblower Programme internally or seek a qualified third-party provider. The latter has proven to be a successful strategy for many medium and large sized organisations that have already deployed hotlines. If the organisation chooses to outsource, it should seek a vendor that specialises in providing ethics and compliance solutions and offers proven and scalable systems, processes, technology and expertise.

ABOUT NAVEX GLOBAL

NAVEX Global’s comprehensive suite of ethics and compliance software, content and services helps organisations protect their people, reputation and bottom line. Trusted by 95 of the FORTUNE 100 and more than 12,500 clients, our solutions are informed by the largest ethics and compliance community in the world.

For further information on Whistleblowing Hotlines visit: www.navexglobal.co.uk

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