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# Whistleblowing Management Handbook

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# Whistleblowing Management Handbook

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# THE ETHICS INSTITUTE

# Whistleblowing Management Handbook

## Liezl Groenewald

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Dedicated to

**the brave and unrecognised heroes who stood up for what is right regardless of the consequences to themselves.**

**You know who you are.**

"To be a whistleblower is to step outside the Great Chain of Being, to join not just another religion, but another world. Sometimes this other world is called the margins of society, but to the whistleblower it feels like outer space."

*C. Fred Alford: Whistleblowers: Broken Lives and Organizational Power (2001)*

The *Ethics Handbook Series* published by The Ethics Institute was introduced with the aim of providing persons involved in the governance and management of ethics in organisations with practical and useful guidance on various aspects of organisational ethics. This *Whistleblowing Management Handbook* is the eighth publication in this series.

The purpose of this *Whistleblowing Management Handbook* is to provide practical guidance to persons in ethics, governance and management positions who have some form of responsibility for implementing whistleblowing programmes, whistleblowing management systems, and investigating whistleblowing reports.

Whistleblowing has been around for a long time. It is generally accepted that the world's first whistleblowing law came into being with the 1778 resolution of the US Continental Congress in favour of Samuel Shaw and Richard Marven. The two seamen accused Commander in Chief of the Continental Navy, Esek Hopkins, of torturing British prisoners of war (Kohn, 2011). The use of the term 'whistleblower' dates to the 19th century. The term combines 'whistle', a device used to alert or call attention to something, and 'blower', referencing the person issuing the alert by the blowing of the whistle. In the 19th century the term was used for law enforcement officials who used a whistle to alert fellow police officers or the public of danger. Less commonly, sports referees were also called whistleblowers as they alerted the crowd, players, and coaches of irregular sports plays (Merriam Webster, n.d.). Journalists and political activists, such as Ralph Nader, excessively used the term during the 1960s resulting in changing the public's understanding of the term to what it is today (Kenton, 2020).

> The whistleblowing landscape has changed significantly over the last years. High profile cases have prompted new whistleblower protection regulations and legislation across the globe.

The whistleblowing landscape has changed significantly over the last years. High profile cases have prompted new whistleblower protection regulations and legislation across the globe. This resulted in organisations having had to re-evaluate the effectiveness of their internal reporting systems.

But even with the increased awareness about the necessity of identifying and addressing issues internally among management, ethics practitioners, and compliance practitioners, many employees still prefer to report misconduct publicly. The question is,

## Uncertainty exists about whether the organisation will take a report seriously and whether it will keep the information confidential

why? The answer probably lies in employees distrusting their organisations to respond constructively to their reports. Uncertainty exists about whether the organisation will take a report seriously and whether it will keep the information confidential. And then, of course, employees fear that they will be victimised for speaking up. These are all real and valid concerns. It is for these reasons that organisations must ensure that they have robust, effective, and efficient whistleblowing management systems in place.

In this *Whistleblowing Management Handbook*, the factors that have a bearing on the success or failure of whistleblowing programmes and whistleblowing management systems, are explored.

The book starts with describing what whistleblowing is, followed by part two, where whistleblowing is contextualised within a formal ethics management programme. The third part unpacks the various requirements for ensuring an effective whistleblowing management system. This part also includes the four pillars of the latter, namely receiving, assessing, investigating, and concluding whistleblower reports. These pillars are explained in detail with clear guidance on how to implement them successfully.

## When employees feel safe to report misconduct, it is usually indicative of a strong ethical culture, while the decision to remain silent, indicates a weak ethical culture.

In the fourth part the focus is on the importance of a whistleblowing policy, with emphasis on legislative and best practice requirements in terms of policy content. The fifth part addresses the all-important area of organisational culture. I explore the link between organisational culture and whistleblowing and the reasons for employees speaking up, as well as for remaining silent. When employees feel safe to report misconduct, it is usually indicative of a strong ethical culture, while the decision to remain silent, indicates a weak ethical culture. It is thus necessary for organisations to ensure that they develop strong ethical cultures where employees will feel comfortable and protected to speak up.

To assist in this regard, I conclude section four with the ten most important steps organisations should take to create a safe reporting culture. These steps have been derived from emerging global best practice and practical experience.

I trust that the *Whistleblowing Management Handbook* will become a trusted companion for those tasked with the process of designing, implementing, and managing whistleblowing programmes and systems.

Ultimately, this *Whistleblowing Management Handbook* is aimed at ensuring that employees can alert the organisation of unethical conduct in a safe way, without any fear, and with their heads held high.

**Liezl Groenewald**
August 2020

Before one can define an effective whistleblowing management system one should first be clear about the meaning of 'whistleblowing'.

Whistleblowing has several definitions. One of the first modern uses was by US consumer activist Ralph Nader in 1971 who described whistleblowing as "an act of a man or woman who, believing that the public interest overrides the interest of the organization he serves, blows the whistle that the organization is involved in corrupt, illegal, fraudulent or harmful activity" (Rongine, 1985: 28). A legal definition of whistleblowing states it as "the disclosure by a person, usually an employee in a government agency or private enterprise, to the public or those in authority, of mismanagement, corruption, illegality, or some wrongdoing" (The free dictionary, n.d.). Transparency International (2009) declares that whistleblowing is "the disclosure of information about a perceived wrongdoing in an organization, or the risk thereof, to individuals or entities believed to be able to effect action". And the Council of Europe's Resolution on the protection of whistleblowers defines whistleblowing as "concerned individuals sounding the alarm in order to stop wrongdoings that place fellow human beings at risk" (Lewis, 2010).

Simply put, whistleblowing means the act of organisational stakeholders (e.g. employees, customers, or service providers), either former or current, calling attention to wrongdoing that has occurred, is occurring or is about to occur in an organisation. This is done to internal or external parties who they believe can act. It is aimed at overcoming criminal, irregular, and unethical conduct in organisations, both public and private.

> **Whistleblowing is a conscious act of a person or a group of persons that involves a high degree of risk.**

Whistleblowing is a conscious act of a person or a group of persons that involves a high degree of risk. It is basically a situation in which an employee becomes aware of an unethical behaviour or illegal activity within the organisation and decides to report it to someone who can act on the report. As discussed in Part 5 of this Handbook, an employee must first become aware of, or notice the negative situation, and when the latter result in discomfort for the morally astute employee, the employee will blow the whistle. Whistleblowers act from different motivations, but the main purpose for a morally strong person of this action is a 'protection drive' (Taylor, et al, 2010), namely, to protect an individual(s), an organisation, a community, or the environment. Cognisance should, however, be taken of the fact that some employees may speak up for other less

virtuous reasons such as protecting themselves if they took part in misconduct, being disgruntled, or vindictive.

To enable morally astute whistleblowers to act, organisations must put systems, processes, and policies in place that will assist them in this regard. This whistleblowing ecosystem is known as an organisation's whistleblowing programme. The purpose of such a programme is to provide avenues for employees to speak up on unethical conduct, to reduce employee misconduct, and to reduce organisational risk by identifying and resolving allegations of ethics violations – as quickly and as efficiently as possible.

## An effective whistleblowing management system creates a culture of trust.

An effective whistleblowing management system creates a culture of trust. Being able to raise concerns confidentially or anonymously, and seeing that their concerns are addressed, result in employees building confidence that their concerns and discomfort will be addressed. It furthermore enhances their belief that the organisation is committed to ethical conduct, and serious about addressing matters of unethical conduct.

### AN ORGANISATION'S HOTLINE REPORTING SYSTEM SERVES MANY PURPOSES, SUCH AS PROVIDING:

- A communications channel beyond the rumour mill
- A way to direct employee questions to the appropriate resource
- An opportunity to provide guidance before a poor decision is made
- An early warning of issues or problem areas brewing in the organisation
- A last internal stop for whistleblowers before they take an issue outside the organisation to a regulator, attorney, or the media
- A confidential place for employees to clarify policy and discuss or report concerns

*NAVEX Global (2019)*

Emerging best practice suggests that organisations should avoid using the term 'whistleblower' when describing the whistleblower programme. Instead, consider more open and welcoming connotations with the programme and processes and rather than 'whistleblowing hotline', brand the internal or external hotline as 'integrity line', 'ethics hotline', 'ethics line', 'tell us line' or 'speak-up line'. Also consider using the same branding as used in the code of ethics and awareness materials. The same 'look and feel' will help identify the various programme resources available to employees.

For purposes of consistency and ease of understanding, whistleblowing and speak up will be used interchangeably throughout this Handbook.

Having provided some background to whistleblowing, I will now situate whistleblowing within the context of the governance and management of organisational ethics.

> "My life was influenced by the situation: I internalised everything, I succumbed to sadness, depression, frustration, isolation and bad eating habits."
> *Fuchs and Groenewald (2018 - 2019)*

Organisations are in different phases of maturity insofar as ethics management is concerned. Rossouw and van Vuuren (2017) provide a classification system whereby an organisation's ethics management maturity is shown to be a function of the current beliefs and attitudes towards ethics in the organisation (see table below). In terms of this model, the Modes of Ethics Management Model, the extent to which ethics is viewed as being important for the organisation and its sustainability determine whether it has an ethics management function and, if it does, how much is invested in its mandate. The 'size' of the investment is reflected in the dedication, time, and monetary and human resources allocated to the ethics function. The following table depicts the Modes of Ethics Management Model as it relates to the presence or absence of whistleblowing facilities.

| | Immoral | Reactive | Compliance | Integrity | Totally Aligned Organisation |
|---|---|---|---|---|---|
| Main features of ethic management modes | Unethical behaviour rife and endorsed; no ethics management | Some ethical standards/ code but inconsistent application; few ethics management systems; *laissez-faire* ethics management | Rules-based ethics management; ethics communication aimed at awareness, vigilance and preventing of unethical behaviour; transactional ethics management | Values-based ethics managment; promotion of ethical behaviour; communication aimed at ethics talk; transformational ethics management | Seamless integration of ethics in organisational purpose and activities; ethics part of business-as-usual; integrated ethics management |
| Whistle-blowing | Whistle-blowing not tolerated; whistleblowers severely punished | Whistleblowing facilities may exist, but whistleblowing is perceived as undesirable practice (fear of exposure of inconsistencies) | Whistleblowing actively encouraged, facilities created and actively managed; whistleblowers rewarded | Whistleblowing facilities exist, but only used as a last resort to expose gross malpractice; whistleblowing supplementary to ethics helplines | Whistleblowing facilities may exist (e.g. by law), but ethical issues are discussed and solved before whistleblowing becomes necessary |

*Rossouw and Van Vuuren (2017)*

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A mode can be described as the preferred manner of an organisation to manage its ethics. The preferred mode reflects the decision its leaders make to ignore ethics and to act unethically, or to actively deal with ethics in an explicit manner. The mode is observable and has distinct properties that display the organisation's strategy (conscious or not) to manage or ignore ethics. Each of these ethics management strategies would involve the implementation of a number of ethics management interventions to a greater or lesser extent (Rossouw and van Vuuren, 2017).

It is clear from the table that no whistleblowing facilities exist in the immoral mode, while organisations in the reactive mode may have such facilities. Rules-based organisations, namely those in the compliance mode, have whistleblowing facilities with the aim of preventing unethical behaviour. Values-based, or integrity mode organisations on the other hand, aim to promote ethical behaviour, and whistleblowing facilities are mostly only used as a last resort to expose gross malpractice. Interesting to note is that totally aligned organisations may also have limited whistleblowing facilities because ethical issues are discussed and solved before whistleblowing becomes necessary.

Organisations in the compliance mode, the integrity mode, and the totally aligned mode view ethical standards and management as a business imperative. It is in these organisations that unethical behaviour is unacceptable, and where there is a need from the organisation's side to be informed of such conduct in its midst. These organisations therefore avail avenues to employees to enable them to alert the organisation of unethical conduct. These avenues and related processes, policies and procedures comprise an organisation's whistleblowing programme.

> A whistleblowing programme forms an integral part of an ethics management program aimed at enhancing an organisation's ethical culture and transforming its mode of ethics management.

## 2.1    The governance of ethics

A whistleblowing programme does, however, not stand on its own. It forms an integral part of an ethics management programme aimed at enhancing an organisation's ethical culture and transforming its mode of ethics management. This programme is embedded in the organisation's governance of ethics framework. The framework explains the structures, reporting flows, and core components of the governance and management of ethics as can be seen from the following diagram:

*The governance of ethics framework ©The Ethics Institute*

The main components of this governance and management of ethics framework are:

1.        Strong leadership *commitment* that sets out a clear ethical tone is critical to the success of ethics management interventions. Leaders should know their proactive responsibilities in this regard.

2.        Organisations should ensure that their *governance structures* take responsibility for the governance of ethics. This entails setting the strategy and policies guiding the organisation's ethics performance. The governance structure – either the governing body or a sub-committee thereof – is responsible for oversight as well as external reporting to stakeholders.

3.        Executive management should ensure that there are structures and people at the appropriate level dedicated to managing the organisation's ethics. This is part of the *implementation of ethics management* which entails five key processes. These are conducting ethics risk assessments, developing an ethics strategy and ethics management plan, drafting a code of ethics and ethics related policies, institutionalising the ethical standards of the organisation, and monitoring and reporting on progress with the ethics management programme. The *whistleblowing programme and management* reside under the organisation's institutionalisation of its ethical standards.

4.      There should be an *independent assessment* of the ethics management processes (by, for example, internal audit) and of the ethics management reports (by, for example, external auditors). This information should then be reported to external stakeholders in integrated, annual, or sustainability reports.

Because whistleblowing management systems reside under ethics management interventions, the focus of this Handbook is on the latter only and not on the other elements of the governance of ethics framework.

## 2.2   Proactive and reactive ethics management interventions

Rossouw and van Vuuren (2017) distinguish between two types of ethics management systems: proactive and reactive.

Proactive systems include various interventions to promote ethical behaviour in a positive and supporting manner. These systems are inspiring and focus on the benefits of ethical behaviour for the organisation and its stakeholders.  This is done by including an ethics dimension into existing organisational activities, namely communication, recruitment, selection, orientation, performance management, training, and the implementation and monitoring of ethics-related policies (Rossouw and van Vuuren, 2017: 302-303).

Reactive systems are developed to deter and discourage unethical behaviour in a negative and prohibitive manner. They are punitive in nature and help the organisation to address transgressions of its ethical standards. These reactive ethics management systems are confidential whistleblowing or speak up systems and disciplinary procedures.

Organisations often put more emphasis on the reactive part of ethics management, without necessarily realising the impact of reactive interventions on the organisational culture.  The way in which organisations deals with whistleblowing and disciplinary procedures is a clear indication of their commitment to ethical conduct.

In the next section I provide guidance on the importance of an effective whistleblowing management system, as well as what it entails.

## Action speaks louder than words!

Having a common understanding of what whistleblowing entails, as well as its purpose in terms of governing ethics in organisations, the focus now shifts towards the system required for ensuring that a whistleblowing programme and the management of whistleblowing reports are effective and efficient.

## 3.1   The whistleblowing management system

A management system in general is defined as "a set of interrelated or interacting elements of an organisation to establish policies and objectives and processes to achieve those objectives" (ISO 14001:2015). It can address a single discipline or several disciplines.  A whistleblowing management system thus refers to the interrelated elements of establishing policies and procedures to address whistleblowing effectively in an organisation.

An effective whistleblowing management system addresses the four pillars of a successful and responsive whistleblowing environment, namely:

i)       Receiving reports
ii)      Assessing reports
iii)     Investigating reports
iv)     Concluding cases

> A whistleblowing management system is essential to build trust in the organisation and the organisation's commitment to ethical practices.

Such a system is essential to build trust in the organisation and the organisation's commitment to ethical practices. Not only will such a system demonstrate leadership commitment to preventing and addressing wrongdoing, it will also encourage persons to report wrongdoing timeously, reduce and prevent unfavourable treatment and victimisation of whistleblowers and other involved parties, encourage a culture of transparency and accountability, and 'make it okay' for people to blow the whistle.

Each of these four pillars will now be discussed to assist organisations in establishing and implementing effective and responsive whistleblowing management systems.

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### 3.1.1    Receiving whistleblower reports

Organisations should offer a variety of methods for reporting that do not require 'chain of command' reporting. Some people may feel comfortable speaking to their manager about misconduct, while others are hesitant to reveal their identities because they fear retaliation. Offering a range of reporting options will assist whistleblowers in choosing the channels, and the level of confidentiality and anonymity, that they feel most comfortable with.

| Confidential reporting | Anonymous reporting |
|---|---|
| This means that the person receiving a report will know the identity of the whistleblower, but will not make it known to anyone else without permission from the person reporting wrongdoing -  unless there is an overriding legal obligation to do otherwise. | This means that the whistleblower does not state his or her name when reporting unethical conduct. No one will thus know who reported the wrongdoing. |

### 3.1.1.1   Multiple reporting channels

Organisations should offer one reporting 'ecosystem'. An ecosystem is generally defined as a group of interconnected elements formed by the interaction of elements in their environment (dictionary.com). There should be multiple reporting channels available to employees for reasons stipulated below. But it is important that these channels interact with each other. They should not be viewed in isolation, but rather as being interconnected. Such interconnectedness finds expression in an effective whistleblowing management system.

The possible recipients of whistleblowing reports are usually stated in an organisational whistleblowing policy. When employees have confidence, they can make an 'open door' report directly to their manager, next level managers, human resources, internal audit, forensic investigations, or the ethics officer or manager. Reports to these persons can be made in person, via email communication, telephonically or even letters under office doors. Except for the latter, it is, however, difficult to maintain anonymity following these avenues for reporting unethical conduct.

For this very reason, organisations contract independent third-party whistleblowing hotline service providers. These service providers offer whistleblowers an anonymous and confidential channel for reporting. They can usually do so telephonically, via email, free fax, and free mail, through a dedicated website or text messages to the service provider.

It is important to note, though, that having multiple reporting numbers or sites for different issues is not only a burden from an administrative perspective, but it can confuse employees and other stakeholders. An organisation can quickly alienate potential reporters if complaints regarding, for example, discrimination and sexual harassment, are turned away because the website or hotline is 'for corruption and bribery complaints only'.

Research conducted in South Africa (Groenewald and Vorster, 2019) emphasises the importance of a whistleblowing ecosystem. It was found that of the one-third of employees who personally observe misconduct, just over half of them report it. Most (42%) of these employees in corporate South Africa prefer to blow the whistle to their line-manager, 49% prefer to use a variety of other channels, and only 2% report misconduct through an independent whistleblowing hotline as illustrated below.

**I report the unethical behaviour to...**

| | |
|---|---|
| My manager | 42% |
| Human Resources (HR) | 13% |
| Another manager | 11% |
| Risk Management | 11% |
| The person responsible for ethics | 8% |
| Internal Audit | 6% |
| A hotline (whistle-blowing facility) | 2% |
| Other | 8% |

*Groenewald and Vorster (2019)*

The findings above correlate with global research (Ethics and Compliance Initiative, 2019) that found that nearly half (45%) of employees observe misconduct globally. As in South Africa, most reporting is done to an employees' direct supervisor (51%). This is followed by higher management (17%) and human resources (8%). Only 6% of whistleblowers globally report to their organisation's hotline.

Of critical importance is what managers do with these reports. Many organisations do not have policies and processes in place to enable managers and other 'open door' recipients to capture reports they receive. The result is that reports are not logged in a central whistleblowing management system. This in turn may lead to reports not being investigated, or to statistics about the number of reports received by the organisation being skewed.

Many 'open door' recipients also lack the tools and training they need to properly address these reports, manage fear of retaliation, and keep the whistleblowing / speak up culture strong. The findings reinforce the need for organisations to train managers and other 'open door' recipients on how to respond to reports of misconduct.

## 3.1.1.2  Whistleblowing management system

> A strong whistleblowing management system can track reports from all channels to provide an accurate, holistic view of misconduct cases, as well as an indication of the strength of the organisational culture.

A strong whistleblowing management system can track reports from all channels to provide an accurate, holistic view of misconduct cases, as well as an indication of the strength of the organisational culture. Such a system ensures that reported cases are collected in a central location, tracked and resolved in a timely manner, and accurately reported - no matter where they originated.

A further advantage of a comprehensive whistleblowing management system is that it acts as a data source to identify trends and gaps in the ethics programme, determines where and on which topics training is required in the organisation, identifies 'hot spots' in the organisation, and indicates which policies and processes may be unclear or outdated.

## 3.1.1.2.1  Hosting of whistleblowing management system

The question of who should 'own' the whistleblowing management system is often the subject of debate in organisations. Human Resources (HR) might argue that because most reports are often HR related, they should own the programme. The forensic function

might argue that they need first sight of reports to ensure that serious forensic related cases are investigated without delay, whereas the Ethics Office might argue that they are independent and require a holistic view to enable them to gauge the ethics of the organisation. The decision about where to locate the system should be guided by the principle of independence and the Ethics Office's responsibility to report about the ethics of the organisation to the operational ethics committee as well as the governing body ethics committee which performs an oversight function. Therefore, it is an emerging best practice for the Ethics Office to host the whistleblowing management system.

If the Ethics Office hosts the system, it should receive whistleblower reports not only from the independent whistleblowing line, but also from all other recipients of reports in the organisation such as HR, line-managers, and Internal Audit. After the assessment of a report, the Ethics Office dispatches it to the relevant investigation entity who must provide feedback to the Ethics Office upon closure of the case. This will enable the Ethics Office to submit comprehensive whistleblowing management reports to the operational ethics committee and the governing body's ethics committee responsible for oversight in this regard.

Below is an example of a whistleblowing management system located in the Ethics Office.



**Ethics function keeps whistleblowing management system**

Reports are sent to the Ethics Committee which performs an oversight function

**Ethics Committee**

**Cases received** (Hotline or other reports)

Cases logged and referred to relevant function
**Ethics Office**

Cases investigated
**Forensic function**
**HR**
**Other function**

Ethics Office is kept informed and updates the database
**Ethics Office**

If another function hosts the system, for example the forensic function, the latter should receive all whistleblower reports. After the assessment of a report, the forensic function sends it to the relevant investigation entity who provides feedback to the forensic function upon closure of the case. In this instance, the forensic function should provide access to the whistleblowing management system to the Ethics Office to enable it to draft whistleblowing management reports for submission to the mentioned committees.

Below is an example of the whistleblowing management system located in the forensic function.



**Forensic function keeps whistleblowing management system**

Reports are sent to the Ethics Committee which performs an oversight function
**Ethics Committee**

**Cases received** (Hotline or other reports)

Cases logged and investigated
**Forensic function**

Cases investigated
**HR**
**Other function**

Forensic function is kept informed and updates the database
**Forensic function**

Ethics Office is given access to data/ trent analysis reports
**Ethics Office**

Planning and implementing a whistleblowing management system should be a collaborative and inclusive process that involves representation from several departments including HR, internal audit, security, and risk management. As part of the planning process for the whistleblowing management system, the cross-functional team should define a formal protocol for who is responsible for the investigation of each type of misconduct report the organisation may expect to receive. Partnering of the different stakeholders will also ensure that each department gets what they need from the system. While, preferably, the Ethics Office oversees the system as part of its ethics management programme, HR should be able to record reports and separately have access to relevant data related to their division. Security may want to draw theft related reports from the system, while the Ethics Office would want the ability to access all data, and run reports that combine statistics and data across all departments for a holistic view of

issues and incidents across the entire organisation. When an organisation has a sepa-rated, siloed whistleblowing management structure, it could miss patterns and trends in departments with serious problems.

## 3.1.1.2.2 Fields of whistleblowing management system

What follows are the most important fields that should be included in a comprehensive whistleblowing management system.

### i)    Report reference number

A report reference number is required to identify a specific case, track progress with the investigation of the case, and provide feedback to a whistleblower. Reference numbers are automatically assigned by third-party hotline service providers, be the reports via telephone, web-based applications, text messages, or other digital applications. It is, however, important to assign reference numbers to reports received via 'open door' recipients. This is the responsibility of the whistleblowing management system admin-istrator.

### ii)    Date received

Including the date on which the report was received ensures that feedback about whether the report will be investigated or not can be provided to the whistleblower with-in 21 days as required by the Protected Disclosures Amendment Act (Act 5 of 2017). It also assists with determining when an investigation is taking much longer than needed – especially in cases that are not complex.

### iii)    Incident category

Categorising reports and tracking the number of reports in each category assist with the aforementioned. Although each organisation has its preferred categories, best practice (Penman, 2018) indicates that at least the following categories should exist:

- Accounting, auditing and financial reporting (e.g. financial misconduct, internal controls and expense reporting);
- Business integrity (e.g. bribery, falsification of documents, fraud, conflicts of inter-est and supplier / customer issues);

- HR, diversity and workplace respect (e.g. discrimination, harassment, victimisation, general HR and cases marked as "other");

- Environment, health and safety (e.g. Occupational Health and Safety Act transgressions, substance abuse, environmental legislation non-compliance and assault); and

- Misuse and misappropriation of organisational assets (e.g. employee theft, use of organisational assets for personal matters and abuse of time).

The organisation's whistleblowing management system should make provision for such report categories. Ethics management reports to management forums, an operational ethics committee, and a governing body ethics committee should also include the comparative number of reports received in each category to ensure a complete picture of problematic areas in the organisation. Below is an example of such reporting.
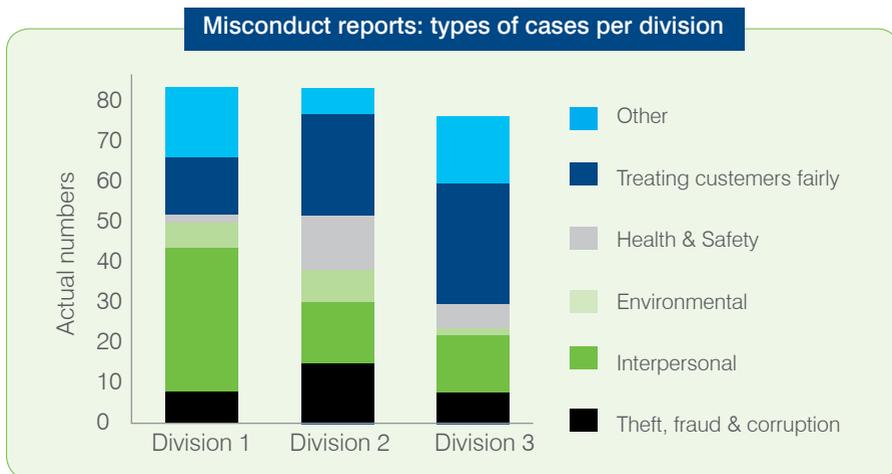


## iv)    Location of allegation

This field makes provision for the office and division in the organisation where the allegation applies. Together with the previous field, namely category of report, the data contained in this field affords the organisation with the ability to provide an on-demand holistic view by office, division, and category. Trend analysis can thus be conducted to detect widespread or repetitive issues in certain offices, divisions, and categories.

### v)     Date of acknowledgement of receipt to reporter

As stated before, the Protected Disclosures Amendment Act (Act 5 of 2017), places a duty on employers to acknowledge receipt of a whistleblowing report, as well as whether it intends to investigate the matter or refer it to another body or person who can deal with the matter more appropriately. This must be done as soon as reasonably possible, but within a period of 21 days of receipt of the disclosure. Should an employer be unable to decide within this time period, the employer will be required to inform the employee in writing that it is unable to do so and, thereafter, advise the employee on a regular basis (at intervals of not more than two months at a time) that the decision is still pending. In such instance, the employer is required to advise the employee of its decision on whether to investigate the matter as soon as reasonably possible but within a period of six months after the disclosure has been made.

> The whistleblowing management system serves not only as a reminder to comply, but also as evidence of compliance with the Act.

Including this field in the whistleblowing management system serves not only as a reminder to comply, but also as evidence of compliance with the Act.

### vi)     Report assigned

This field requires the name and division of the person to whom the disclosure is assigned for investigation. Including the name of the investigator is especially important to ensure that the case can be traced and followed-up on.

### vii)     Date of closure

An investigation into a disclosure should not take unreasonably long. Granted, some forensic investigations are complex and will take some time to conclude. But many other investigations, for example investigations into sexual harassment, conflicts of interest, and abuse of organisational assets, can be concluded in a relatively short time. Including this field in the whistleblowing management system ensures that the duration of an investigation can be tracked to make certain that action is taken as swiftly as possible.

### viii)     Date of feedback to reporter

The South African Business Ethics Survey 2019 found that a third of employees who

observed misconduct did not report it because they did not believe that the report will be investigated. This belief stems from whistleblowers not receiving feedback about the investigations into their allegations.

The Protected Disclosures Amendment Act (Act 5 of 2017), places a duty on employers to inform the whistleblower of the outcome of the investigation undertaken at the conclusion of the investigation. In the case of an anonymous report received via a third-party external whistleblowing hotline service provider, the employer should give feedback to the service provider. This will enable the latter to provide feedback to the anonymous reporter if he or she contacts the service provider. It is, however, incumbent on the anonymous reporter to follow-up in this regard.

Below is an example of a basic whistleblowing management system.

| Report reference no | Date received | Incident category | Location of allegation | Date of acknowledgement of receipt to reporter | Report assigned to | Date of closure of investigation | Date of feedback to reporter |
|---|---|---|---|---|---|---|---|
| Report 001 | 12/01/20 | HR, diversity, and workplace respect | Distribution Centre, Kimberley office | 16/01/20 | J Jones, Ethics Office | 14/02/20 | 16/02/20 |
| Report 002 | 15/02/20 | Business integrity - fraud | Finance, Head Office | 25/02/20 | R Senatla, Forensic investigations | 06/06/20 | 08/06/20 |
| Report 003 | 25/04/20 | Misuse and misappropriation of organisational assets | Maintenance, Pretoria Office | 27/04/20 | J Jones, Ethics Office | 29/05/20 | 30/05/20 |
| Report 004 | 26/04/20 | Financial mismanagment | Supply Chain, Head Office | 03/05/20 | M Majija, Internal audit | 01/06/20 | 05/06/20 |

## 3.1.2  Assessing whistleblower reports

The second pillar of a successful and responsive whistleblowing management system entails the assessment of whistleblower reports.

The organisation should ensure that it has documented processes to conduct preliminary assessments of whistleblower reports. These processes should be based on the principle of objectivity. The purpose of the preliminary assessment is to determine the following:

- Category of allegation
- Completeness of information
- Likelihood and potential impact of risk to the organisation or its stakeholders
- Priority in terms of further investigation (based on risk)
- Precautionary measures to be taken, if any
- Allocation of case

Criteria for assessing whistleblowing reports include, but are not limited to, the following:

- Is sufficient information provided to lay the basis for further investigation?
- Is there a risk to the organisation's reputation, the environment, or its stakeholders?
- Is the allegation credible?
- Can the allegation be verified?
- Does the allegation entail a criminal offence? Does it need to be referred to law enforcement agencies?
- Should evidence be secured to prevent tampering with or destruction thereof?
- Is there a possibility of the matter being reported or leaked to the media?
- Was this allegation reported previously? And if so, was the allegation investigated sufficiently and correctly?
- Does the allegation involve senior employees?
- What is the nature of the misconduct?

The outcome of assessing the allegation report may include doing one or more of the following:

- Engage with other functions (e.g. HR, legal, internal audit, compliance, health and safety, finance), if needed. Note should be taken that such engagement should never compromise the confidentiality of the information, the identity of the whistleblower, or the objectiveness of the investigation;
- Gather more information;
- Implement preliminary measures such as suspending the implicated person and securing evidence;
- Ensure that the whistleblower's safety and security are not compromised when his or her identity is known;
- Refer the whistleblower to other procedures such as the organisation's grievance procedure; or
- Refer the case to relevant authorities such as law enforcement or regulatory bodies.

Where the preliminary assessment reveals tangible and credible information that supports the allegations, a full-scale investigation (through internal investigative functions, internal audit, external experts, external audit firms, legal experts etc.,) follows.

### 3.1.3  Investigating whistleblower reports

The third pillar of a successful and responsive whistleblowing management system entails investigating whistleblower reports.

The Oxford dictionary defines an investigation as "the action of investigating something or someone; formal or systematic examination or research" and collinsdictionary.com defines it as an "examination, inquiry, […] an active effort to find out something. An investigation is a systematic, minute, and thorough attempt to learn the facts about something complex or hidden." It is clear from these definitions that an investigation entails a systematic process to establish facts.

> Thoughtful investigation procedures provide a consistent approach and ensure the protection of all stakeholders.

Nothing is worse for a whistleblowing management program than a mismanaged investigation. Serious errors can be costly and can destroy careers, lives, reputations, and violate somebody's rights. Thoughtful investigation procedures provide a consistent approach and ensure the protection of all stakeholders.

In addition, investigations that drag on for months with no ongoing communication with the whistleblower harm trust in the organisation's whistleblowing programme. It is essential that organisations have sufficient resources available to handle the volume of its whistleblowing reports as well as the need for regular updates to the appropriate people.

Organisations should ensure that they identify, implement, communicate, and maintain a process that ensures that investigations are conducted impartially by qualified persons. Too often organisations assign investigations into whistleblowing reports to the management of the function or department where the alleged misconduct occurred. Effective investigations require specific personal qualities that not all persons possess. Referring cases for investigation to persons who do not possess these qualities and who are not au fait with the basic principles of an investigation, could lead to allegations not being investigated at all or being ineffective or misdirected.

### PERSONAL QUALITIES OF AN INVESTIGATOR

- Impartial
- Analytical
- Emotional intelligence
- Perseverance
- Courage
- Flexible
- Trustworthy
- Fair

### PRINCIPLES OF AN INVESTIGATION

- Understand the scope of the investigation
- Plan the investigation
- Determine who to engage with about what - taking into consideration issues of privilege
- Take steps to safeguard the confidentiality of information
- Gather information and evidence
- Safeguard information and evidence
- Findings and report

> The point of an impartial investigation is to provide a fair and impartial process for both the whistleblower and implicated person, and to reach reasoned findings based on gathered information.

The aim of an impartial investigation is for the employer to determine what occurred when there are allegations that affect the workplace and involve a potential violation of the organisation's ethics, policies, standards, or the law. The point of an impartial investigation is to provide a fair and impartial process for both the whistleblower and implicated person, and to reach reasoned findings based on gathered information. Where organisations do not have an internal investigation function, do not have the required internal specialist investigative skills, or where the impartiality of an internal investigator is questionable, consideration should be given to contracting external investigators.

To the extent possible, a multi-disciplinary personnel approach with the required capabilities may be needed depending on the issue in question and type of investigation.

## 3.1.4 Concluding whistleblower cases

The fourth and last pillar of an effective whistleblowing management system is concluding the case.

It is important that an organisation conclude an investigation in a prompt and appropriate manner (without sacrificing thoroughness). The conclusion of a case signals the end of the enquiry into the whistleblowing report. A case can be concluded when the allegation has been proven or disproven, where the findings are inconclusive and no further action is necessary, or when fact-finding determined that further investigation is not warranted.

Concluding a whistleblowing case may involve several actions such as:

- Issuing findings;
- Recommending remedial actions, sanctions, and changes to policies and procedures where control deficiencies were identified;

- Identifying lessons learnt;

- Providing feedback to the owner of the whistleblowing management system; and

- Providing feedback to the whistleblower and other relevant stakeholders about the findings of the investigation.

Ultimately, a good workplace investigation will identify issues and address problems before they get out of control. Even if the dissatisfied whistleblower or accused later reports the same issues to an external third-party, the employer that has conducted a thorough investigation, documented the results of that investigation, and taken appropriate action will be in a better position to avoid or minimise liability.

Ultimately, a good workplace investigation will identify issues and address problems before they get out of control.

Having an effective and responsive whistleblowing management system should be supported by a comprehensive whistleblowing policy that communicates the organisation's stance on whistleblowing and its commitment to whistleblowers. The policy should provide clear, unambiguous guidelines about how and where to report unethical conduct. The aim of a whistleblowing policy is ultimately to create a culture of openness and accountability, where employees can report knowledge of misconduct without fear of retaliation or occupational detriment. It also communicates to employees that the employer takes any wrongdoing seriously and is committed to identifying and addressing it.

The Protected Disclosures Amendment Act (Act 5 of 2017) places an obligation on organisations to not only have procedures for internal reporting of misconduct, but also that such procedures are made available in writing. But compliance to legislation should not be the only reason for organisations to have a whistleblowing policy. Such a policy also encourages a culture where misconduct can be addressed quickly before any regulatory action against an organisation or damage to the reputation of the organisation can occur. It can also protect an organisation in the event of a current or former employee making false or malicious accusations by stipulating the consequences for making such accusations.

It is thus imperative that organisations realise the importance of having a clear whistleblowing policy that is regularly and effectively communicated to all employees.

## 4.1  What should be in a whistleblowing policy?

As with any other organisational policy, it is important that the whistleblowing policy be written in unambiguous language to ensure that employees on all levels in the organisation understand the principles and procedures clearly. For this reason, it is advisable that organisations refrain from including legal terminology in the policy.

A strong whistleblowing policy that is linked to the organisation's values and regularly and effectively communicated to all employees, should make the following points evident:

- States a strong commitment to a speak-up culture;

- States that the organisation takes misconduct seriously;

- States a commitment to trust, impartiality, and protection throughout the whistle-blowing process;

- Defines the procedures to follow (i.e. how and to whom reports may be made);

- Explains the authority and independence of the whistleblowing management function;

- Identifies the types of concerns and misconduct that may be reported under the policy;

- Points out that employees who are aware of possible wrongdoing within the organisation have a duty to disclose that information through the available reporting channels;

- Indicates the minimum information required to enable the organisation to take action, namely who is involved in the wrongdoing, what is the nature of the wrongdoing, when did it occur, where did it occur and how did it happen;

- Commits to treating all reports of misconduct in a confidential manner;

- Explains the processes to investigate reports made under the policy;

- States that employees may report misconduct anonymously;

- Guarantees that employees who disclose misconduct in good faith through the available reporting avenues will be protected from any form of occupational detriment, victimisation, and retaliation;

- Guarantees that victimisers of whistleblowers will be subjected to disciplinary procedures;

- States that disclosures made in bad faith or maliciously, constitute a criminal offence. If a whistleblower is found guilty in this regard, he or she will be liable for a fine or imprisonment up to two years, or both;

- Explains how the confidentiality of the whistleblower's identity is safeguarded;

- Explains the consequences of non-compliance with the whistleblowing policy;

- States that the policy will be periodically reviewed to check that it is operating effectively and whether any changes are required to the policy;

- In the event of a disclosure being protected under law:

  - Explains that the organisation will acknowledge receipt of reports in writing and provide an indication of its intended action within 21 days of receipt. If a

decision has not been reached within this period, feedback will be provided as soon as reasonably possible but within 6 months after the matter was disclosed (as required by the Protected Disclosures Amendment Act); and

- Whistleblowers will be informed of the outcome of investigations (as required by the Protected Disclosures Amendment Act).

| The Definition of a Disclosure | |
|---|---|
| A disclosure refers to any information about any conduct by an employer or an employee of that employer that intends to show that: | |
| A criminal offence has, is, or is likely to be committed | There has, is, or is likely to be a failure to comply with a legal obligation |
| A miscarriage of justice has, is, or is likely to occur | The health and safety of a person has, is being, or is likely to be endangered |
| The environment has been, is being, or is likely to be damaged | Unfair discrimination is taking place (either in terms of Chapter II of the Employment Equity Act or the Promotion of Equality and Prevention of Unfair Discrimination Act) |
| Any matter related to the above list has, is, or is likely to be deliberately concealed. | |

*Protected Disclosures Act (Act 26 of 2000)*

For the whistleblowing policy to be effective, it is important that the organisation:

- Provides for the training of employees about the whistleblowing policy and their rights and obligations under it; and

- Provides for the training of managers and others who may receive whistleblower reports about how to respond to them. In many cases line-managers are the primary recipients of reports of misconduct. Organisations therefore need to ensure that all line-managers are adept at handling confidential reports and protecting the reporter. The importance of focusing on the message and not the messenger should consistently be emphasised. Employees fear victimisation and would therefore be more likely to report misconduct if they were confident that their reports will be handled confidentially.

In addition, the organisation must be seen to comply with its obligations under the policy. That is the only way in which employees will build trust in the whistleblowing programme of the organisation. Having a robust system that guarantees the confidential handling of reports, and the protection of whistleblowers, contributes positively to ethical organisational cultures, as it communicates to employees that the organisation is committed to upholding its values and ethical standards.

### DOES THE ORGANISATION HAVE A DUTY TO KEEP ANONYMOUS WHISTLEBLOWERS INFORMED?

No, but it is good practise to apply the spirit of the 'duty to inform' provision of the Protected Disclosures Amendment Act to anonymous ethics hotline reports.

If the organisation has an ethics hotline facility, managed by a third-party, agree with the service provider procedures whereby they act as an intermediary, conveying information between the anonymous reporter and the employer, without breaching the whistleblower's anonymity. Most ethics hotline providers provide a reference number that enables reporters to follow up while maintaining anonymity.

Such procedures hold many benefits. For example, the investigator may have questions for them that would help the investigation into the allegation. As the matter is being investigated and when it has been concluded, the organisation can honour the spirit of the Amendment Act and advise the whistleblower of the outcome of the investigation via the hotline.

In this section we look at the effect of organisational culture and its impact on employees' willingness to blow the whistle. There are many reasons that deter employees from speaking up and it is because of these that organisations should ensure that they create an environment where employees are not only encouraged to report misconduct, but where they also feel safe in doing so.

## 5.1  Weak and strong ethical cultures

According to Uys (2014) organisational culture refers to "a cognitive framework consisting of attitudes, values, behavioural norms, and expectations shared by organization members". Uys also refers to organisational culture as the underlying beliefs, assumptions, values, and ways of interacting that contribute to the unique social and psychological environment of an organisation.

Organisational culture thus entails shared assumptions that guide employees by defining appropriate behaviour for various situations in the workplace. It provides employees with a sense of identity and affects the way employees interact with each other, with clients, and with other stakeholders. It may also influence how much employees identify with their organisation – an important motivation for whistleblowers.

> Organisational culture is 'the way we do things around here'. An organisational culture that is infused with the organisation's values and where people are consistently held accountable for misconduct, communicates to employees that ethical conduct is important.

Simply put – organisational culture is 'the way we do things around here'. An organisational culture that is infused with the organisation's values and where people are consistently held accountable for misconduct, communicates to employees that ethical conduct is important. In other words, that the way we do things around here is in an ethical manner. Should employees, however, perceive the organisational culture to be unethical, for example when questionable behaviour is not addressed, or corruption is rife, such unethical behaviour could become the norm. Not only does this put the organisation at risk of reputational harm, but also of financial losses, physical and psychological harm to employees, environmental damage, regulatory breaches with resultant fines, adverse findings, and reduced financial sustainability.

While certain types of unethical behaviour may not negatively impact the sustainability of an organisation, the relentless continuation of such behaviour will negatively impact the organisational culture and employee morale. Employee silence can be dangerous and even deadly. Organisations need people to speak up to ensure that they can address unethical behaviour in its midst before it causes harm. Unfortunately, there are too many instances where employees did report misconduct, but their reports were discouraged or ignored by leadership – with devastating consequences as can be seen from the following case:

## The case of Boeing 747 MAX

There were reportedly 12 whistleblowing reports of safety problems with the Boeing 737 MAX made to the US airline regulatory body, the Federal Aviation Agency (FAA) in April this year. The reports came from employees of both Boeing and the FAA itself. Here is the significance of the reports being made in April: It was the month that followed the crash of Ethiopian Air flight 302, which itself
followed just five months after the crash of Indonesia's Lion Air flight 620 in October 2018.

If only these whistleblowers had spoken up before there was a combined death toll of 346, before Boeing's share price dropped $13 billion in a single trading day and before Boeing's reputation was damaged – possibly beyond repair. It is reported that a preoccupation with competition and speed to market rather than aircraft safety dominated board-level considerations. All the while, the Boeing specialists who could predict the adverse consequences of their Board's demands had access to the FAA anonymous hotline. They just used it too late.

*Milner-Smythe (2019)*

A strong ethical organisational culture that creates an environment that facilitates the disclosure of organisational misconduct, should be established. Research by Groenewald and Vorster (2019) has found that employees observe less unethical conduct in organisations with a strong ethical culture. In addition, it was found that employees report unethical behaviour more in strong cultures where they know their issues will be addressed, as illustrated in the following graphs:

**Have you observed unethical conduct in the last year?**

```
100% ─────────────
 80% ─────────────
 60% ─────────────
        59%
 40% ──────────────
 20% ──────────23%──
  0% ─────────────
          YES
```

■ Poor Culture (< 50% approval)
■ Good Culture (> 50% approval)

**Have you reported the unethical behaviour you observed?**

```
100% ─────────────
 80% ─────────────
 60% ───────────62%─
 40% ──44%──────────
 20% ─────────────
  0% ─────────────
          YES
```

■ Poor Culture (< 50% approval)
■ Good Culture (> 50% approval)
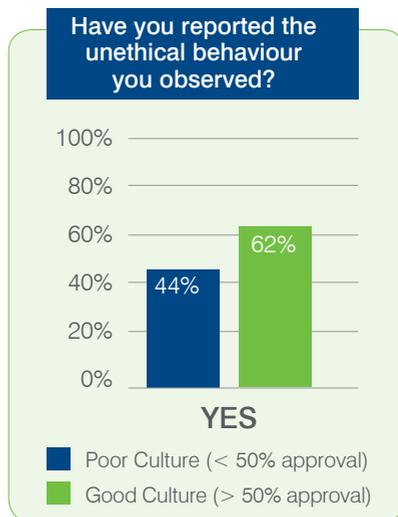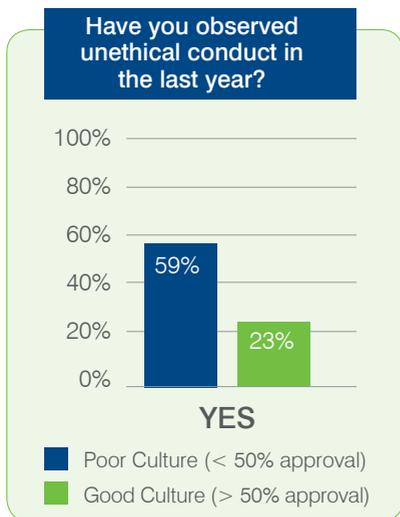
In strong ethical cultures employees feel that they can rely on the support of management and colleagues for blowing the whistle. They are also confident that their reports will be taken seriously, be addressed in the appropriate manner and that they will not be victimised for speaking up. In weak ethical cultures employees are fearful of blowing the whistle for several reasons. These are addressed in this section. But first I look at the reasons why employees decide to speak up.

## 5.2  Reasons why employees blow the whistle

Some theorists believe that people act only in their own self-interest - that altruism does not really exist. But if this is the case, why would some people endure the hardships that accompanies being a whistleblower? What motivates them? What goes through their minds? In this section I will explore these questions.

Whistleblowers are sometimes depicted as disgruntled, opportunistic employees who are out for money, revenge, or both. And although this could be true for some whistleblowers, the majority actually tend to be motivated by a higher sense of purpose. They may consider fairness and the greater good to be a bigger virtue than loyalty to an organisation. However, they often agonise over making their choice - they want to be both fair and loyal. This anguish is called "the whistleblower's dilemma".

> Many see whistleblower as a derogatory term for a disloyal employee, but
> we've found that the whistleblower is often forced to go outside
> [the organization], either by fear, inaction, or both."
> – Dr Patricia Harned, CEO, Ethics & Compliance Initiative

*(Businesswire, 2012)*

Some whistleblowers do not have a strong fairness-versus-loyalty conflict though. Instead, they believe what they are doing is highly loyal - that is, they think that reporting misconduct makes the organisation better, thus demonstrating without a conflict their loyalty to the organisation and their moral beliefs.

## 5.2.1  Factors that lead employees to become whistleblowers

There are several factors that influence a person's life that can determine whether they will become a whistleblower. The four most important factors are (1) situational factors, (2) cultural factors, (3) personal factors, and (4) religious factors.

### (1)    Situational factors

If an employee feels that their organisation encourages them to speak up, make it easy for them to do so by providing proper avenues for reporting, and provides protection against victimisation, they are more likely to blow the whistle.

### (2)    Cultural factors

Employees who come from interdependent societies such as China or Japan, are less inclined to speak up as this could lead to them becoming social pariahs. Whereas employees from societies where independence is encouraged, such as the USA, are more likely to take a stand against unethical conduct by reporting it.

### (3)    Personal factors

Whistleblowers tend to be strong people, often with intense personalities. Far from being 'losers', they are often those employees with a higher education level and a higher salary level. They also usually have been with the organisation for a while and are extroverts. Moreover, they generally are more likely to take responsibility for their own actions (The Whistleblower Lawyer, n.d.).

## (4)     Religious factors

The concept of religion, which can be defined as a collection of a person's values and beliefs, is another factor that may lead employees to blow the whistle. People want to live a life that is compatible with their religious beliefs where the latter requires compliance with the various principles of their religion. Because religion is a way of life, it determines a person's work life to a great extent. Whistleblowing can be done as a requirement of a religious principle. An employee who emphasises that the ethical principles of their religion determine their outlook on life and work, are likely to report in accordance with their religious beliefs.

In addition to the afore-mentioned factors that lead a person to blow the whistle, research conducted by the Ethics Resource Centre in 2011 found that employees go through various cognitive processes before they make the final decision to speak up about misconduct. This process entails:

• Awareness

• Agency

• Security and investment

• Support and connectedness

Schematically the above processes can be demonstrated as follows:



**Inside the mind of a whistleblower**

AWARENESS
This is wrong I should do something.

AGENCY
Can I make a differance?

SECURITY & INVESTMENT
Should I be the one to say something?

SUPPORT & CONNECTEDNESS
Who can I rely on for help?

I won't say anything.

I will say something.

Who should I tell?

*Ethics Resource Centre (2011)*

### 5.2.1  Awareness

In many cases employees observe misconduct, but do not report it because they are not attuned to the ethical dimension of workplace behaviour and as such fail to see how particular behaviours transgress the organisation's ethical standards and values. But those employees who are familiar with such standards can recognise misconduct as well as their duty to report it. Furthermore, their own values are mostly aligned with that of the organisation. They are thus also intrinsically motivated by their personal values to act on their observations.

Unfortunately, awareness does not always result in action.  What separates whistleblowers from those who do nothing? Those who decide to speak up (1) believe that their report will make a difference (agency); (2) they have a feeling of safety and personal commitment (security and investment); and (3) they have connections to people and resources that provide support (support and connectedness).

### 5.2.2  Agency

Some employees want to know that their act of courage will make a difference and that the organisation will take corrective action. Others are motivated by the belief that 'I can have an impact'. As mentioned, they often have a strongly developed sense of right and wrong. This desire for justice, and for preserving their personal integrity can drive them to speak up. Some employees are, of course, more confident than others that their word matters. It has been found that employees who believe they are influential and who have more power, such as those in managerial positions, are more willing to blow the whistle on misconduct than those in non-managerial positions.

> Employees do, however, not only blow the whistle for the benefit of themselves or the organisation. They may also do so to contribute to the community's welfare ...

Employees do, however, not only blow the whistle for the benefit of themselves or the organisation. They may also do so to contribute to the community's welfare by reporting on a situation witnessed in the organisation. Examples in this regard are Bianca Goodson, former CEO of Trillion Capital, who is credited for being the first whistleblower on

State Capture in South Africa, and Edward Snowden, who copied and leaked highly classified information from the US National Security Agency in 2013 when he was a Central Intelligence Agency employee and subcontractor. A whistleblower who was interviewed stated:

> "And this was empowering for me because it just made me feel like I am actually taking my life back"

*Fuchs and Groenewald (2018 - 2019)*

## 5.2.3 Security and investment

> Employees who are personally invested in the organisation, whose values are aligned with those of the organisation, and who intend to stay at the organisation for more than three years, are more likely to speak up.

Many employees choose not to report because they feel they are not in the position to do so, for example, they fear being fired or being victimised. They would rather have someone else take care of it. But whistleblowers feel a sense of safety and personal obligation to do something because they are often financially secure, confident in the organisation's finances, and/or believe that the organisation will act and protect them from victimisation. Contrary to the belief that whistleblowers are disloyal to their organisation, it is often the opposite – employees who are personally invested in the organisation, whose values are aligned with those of the organisation, and who intend to stay at the organisation for more than three years, are more likely to speak up.

It is often seen that employees internalise their organisations. These employees demonstrate high levels of commitment, identification, and citizenship behaviour towards their organisations. They take great pride in working where they do and feel they have a personal stake in the organisation. When they see wrongdoing, they can feel personally betrayed. They want to protect their organisation, and by speaking up they believe that they are contributing to the preservation of not only their own employment, but also the sustainability of the organisation.

Another reason for whistleblowing based on an employee's connectedness with the organisation, is the belief that organisations can change. Employees who have internalised the organisation will blow the whistle on non-functioning mechanisms or gaps in procedures because they believe that the organisation will address these mechanisms and gaps. As a result, they believe, the organisation will change - an important indicator that the whistleblower is taking care of organisational interests. This is evident when a whistleblower stated:

> "The positive side of having blown the whistle is that you are
> a positive tool in the story of stopping fraud
> or whatever you discovered"

*Fuchs and Groenewald (2018 - 2019)*

## 5.2.4  Support and connectedness

A further reason for employees to blow the whistle is that they believe they can count on the support of others. In the workplace they feel that they can rely on the support of management, their colleagues and company resources. They believe that their workplace is a community where people look out for each other. On a personal level they have a sense of being connected with family, a religious community, friends, classmates, online friends, social clubs, neighbours, and publicly available resources. Generally, the more primary sources of support an individual has, the more likely he or she will report.

Having made the decision to speak up, the next question is 'who should I tell?' It seems as if personal connections are again important. Research (Groenewald and Vorster, 2019) has shown that most employees prefer to report to someone they already know and with whom they have a relationship: their direct manager. Employees would rather sacrifice anonymity and report to someone they know and trust than through an anonymous hotline. And when perceptions of a direct manager's ethical commitment are less positive, they would rather report to someone in a higher managerial position than through the organisation's hotline.

But if employees perceive that the ethics of their top managers or supervisors are weak, and the overall organisational culture is weak as well, they might choose to go outside the organisation, for example to the media, the government or a regulatory body.

Another factor prompting employees to report externally is the severity of the issue. If they perceive the misconduct as very serious – to the extent that it could, for example, harm the organisation, the environment, or the lives of other employees - they will report externally regardless of the available internal avenues for reporting.

### And what about the money?

> A financial reward is generally at the bottom of the list of reasons why a person would want to go through months or years of court cases.

Admittedly the award of money can come into play, but it is rarely a true motivation. The other motivations and reasons mentioned above tend to dominate the decision process of someone who is agonising over whether to blow the whistle. A financial reward is generally at the bottom of the list of reasons why a person would want to go through months or years of court cases. Generally, only a strong sense of moral purpose, a need to protect others, or the desire to benefit an organisation they care deeply about, are enough to convince a whistleblower to take on the often long and arduous journey that follows on having blown the whistle.

It is important for organisations to understand the motivations and thought processes of those employees who might blow the whistle on misconduct. By doing so organisations can gear its whistleblowing programme and processes to encourage and support employees to act on their personal principles and beliefs when they encounter wrongdoing in the organisation.

## 5.3 Reasons why employees do not blow the whistle

Having now an understanding of the reasons why employees stand up for what is right, one also needs to be cognisant of the reasons why they choose not to speak up. Credible information provided by concerned employees is an organisation's best hope to detect harmful activity at an early stage, yet far too often those who know have turned a blind eye to misconduct in their midst. And in many organisations management, knowingly or unknowingly, continues to silence and disengage their employees.

When an employee withholds potentially critical information or concerns from those who may be able to act constructively on that information, it can have serious implications for organisational performance and reputation. In a study of more than 1,600 individuals from 30 organisations, VitalSmarts (date unknown) found that 93% of people say their organisation is at risk of an accident waiting to happen because people are either unwilling or unable to speak up.

**The ten most cited reasons for employees' unwillingness are:**

## • Fearing victimisation

Groenewald and Vorster (2019) found that fear of being victimised (32%) was the number one reason given by employees for not reporting observed misconduct. In many situations, reports turn into a debate about identities and personalities, instead of concentrating on investigating the reported facts or allegations. Focus on the serious facts is pushed to the side, and the employee is left defending their very being.

Many organisations have implemented strict policies to protect whistleblowers, but the fact that roughly one third of employees still fears victimisation indicates that such policies are either not taken seriously, that employees are unaware of them, or that they are not enforced. Reports in the media of cases where whistleblowers have been victimised probably also contribute to the belief that whistleblowers will be victimised, as one whistleblower who we interviewed testified:

> You get targeted, bullied, emotional blackmail, emotional abuse - everything to get rid of you a.s.a.p.

*Fuchs and Groenewald (2018 - 2019)*

## • Believing that the organisation will not act

The second most mentioned reason for being unwilling to report, is that employees do not believe that the organisation will act on the report. This belief likely emanates from either personal experience, or from observing others' experience. It seems, then, that South African organisations are not yet complying with the Protected Disclosures Amendment Act (Act 5 of 2017), which requires that feedback must be provided to reporters about (1) whether they will be investigating a report, and (2) the outcome of

investigations. Complying with the Act will significantly decrease employees' belief that their organisation will not act on reports of misconduct.

- **Disbelieving that anonymous reporting is possible**

> Anonymous reporting is a process whereby employees can submit a whistleblowing report without revealing their identity.

In 2019 13% of employees in South Africa indicated that they did not report observed unethical behaviour because they did not believe they could do so anonymously (Groenewald and Vorster, 2019). Anonymous reporting is a process whereby employees can submit a whistleblowing report without revealing their identity. To secure the anonymity of the whistleblower, organisations need to guarantee that the whistleblower cannot be identified by personal attributes (such as the working department, IP address, telephone number, voice, writing style, etc.). Also, all data transferred by the person should be processed and stored in an encrypted way. It is unfortunate that organisations do not explain these 'rules' to their employees – if they did there would be more trust in the anonymous channels. But another big mistake made by anonymous reporters themselves, is to tell their colleagues that they have blown the whistle on another colleague. No wonder then that the employer can identify them!

It is for this very reason that it becomes important for organisations to explain and train their employees on what anonymous reporting means and how it works in practice.

- **Sweating the small stuff**

Employees may feel that if they report the 'little things', or day-to-day issues, they may be made to feel stupid, unimportant, or socially isolated for speaking up. However, if a climate is created where employees truly do not need to sweat the small stuff, then the organisation is more likely to hear about bigger and more serious issues.

- **Fearing a counterattack**

If someone has previously been labelled a 'trouble-maker' for reporting misconduct, employees remember this. They will clam up if they feel that they will get into trouble for speaking up. In addition, the reporter's action can harm trust in the accused and group functioning.

- ### Fearing job loss

It is no secret that for most employees, their job is a means to an end. By using their skills, they can pay for food, clothes, mortgage, education and recreation for them and their loved ones. When witnessing misconduct at work, the average employee is faced with the possibility that by rocking the boat their position in the organisation will be threatened. Where the misconduct is occurring at a level higher in the organisation, the dilemma is even more pronounced for the employee. Power and position can be strong barriers to action against misconduct.

If effective, safe, and accessible avenues for reporting misconduct are not available to the employee, they might well ignore the behaviour. Accusations, undermining or enabling of dismissal are all real fears for employees in such position.

> If the basic foundation is threatened (food, safety etc. – Maslow's pyramid), people won't blow the whistle.

*Fuchs and Groenewald (2018 - 2019)*

- ### Believing that it is just the way it is done

Misconduct can be so subtle and so pervasive that employees can simply miss the signs that something is wrong. For employees who have been in an organisation for a long time, a type of 'misconduct-creep' can occur where, for example, regulatory and procedural corners are gradually cut, slightly dubious deals are done and unusual 'tweaks' to the accounts begin to occur. Employees sometimes just do not notice that anything is wrong and those who have been slowly and increasingly exposed to misconduct might simply see this as the status quo – nothing to be concerned about.

- ### Being embarrassed

In certain types of cases, such as sexual harassment, employees often feel that they may be misinterpreting certain behaviours, including the language used and advances made. These employees are also embarrassed to speak up. They often feel they could have done something to stop the inappropriate behaviour while others think it is easier to simply avoid or ignore the person with the bad behaviour than file a report. In addition, reporting harassing behaviour can make an individual feel self-conscious and uncomfortable in explaining the incident.

- **Not wanting to be the office snitch**

Parents and teachers have imprinted children not to 'snitch' on each other. In the workplace many employees' initial reaction is that they should report misconduct, but because they have been socialised to believe that this is 'snitching' - which makes them look petty, judgmental, or like a 'goodie-goodie' - they go against their better judgment and do not report. They also fear they will be ostracised by their colleagues - especially if the perpetrator is popular among his or her co-workers. Employees sometimes rationalise their failure to report by thinking, 'I don't want to get this guy in trouble…He has five kids and needs his job!' Employers must teach their employees to be responsible and report all incidents of misconduct – it is their duty.

- **Not knowing who to tell**

> A clear and transparent process through which employees can report their concerns is vital….Much work is needed to create a safe space for employees to report transgressions of the organisation's ethical standards.

If we take all the afore-mentioned reasons and then add a hidden or non-existent process for reporting misconduct, the likelihood of misconduct being effectively dealt with in the workplace might well reduce to zero. Employees should not need to wade through HR documentation hoping to find the right person or phone number. A clear and transparent process through which employees can report their concerns is vital. The best and most genuine processes will also encourage employees to approach appropriate external experts, such as lawyers or law enforcement agencies, in situations where they believe that there is nobody internally with whom they can speak openly.

The reasons provided for not blowing the whistle on misconduct demonstrate that not all organisations have been able to create an environment where employees trust their whistleblowing systems and / or related processes. Much work is needed to create a safe space for employees to report transgressions of the organisation's ethical standards. Without such a safe space, governing bodies and management might find themselves in precarious situations that could have been prevented.

## 5.4 Top ten steps to creating a safe whistleblowing culture

Many organisations believe that the mere existence of whistleblowing channels will motivate employees to speak up. But in the previous section we saw that this is not necessarily the case. Organisations need to embark on a consistent and sustainable whistleblowing programme to change employees' perceptions and beliefs about whistleblowing as well as their possible negative experiences in this regard.

The following actions should be included in such programme:

### 5.4.1 Gain board and top-level commitment to the safe-reporting programme

Creating a strong 'tone from the top' is critical in generating an ethical organisational culture from the top down. Not only should the governing body and top management visibly and audibly demonstrate their commitment to an ethical culture, but they should also take a strong stance against the victimisation of employees who report misconduct.

### 5.4.2 Regularly review whistleblowing training and awareness activities

> Organisations should embark on regular awareness, communication and training activities using multiple methods, and taking different target audiences into account.

Overall reporting rates remain low for organisations based not only in South Africa, but also globally. Although organisations tend to undertake an initial launch of their whistleblowing programme and include information about the latter in their induction programmes, it is not sufficient to influence the organisational culture or employees' preconceptions about whistleblowing. Organisations should embark on regular awareness, communication and training activities using multiple methods, and taking different target audiences into account. Such activities should focus on (1) the available reporting channels, (2) how to report, (3) what to report, and (4) the protective measures in place for those who report misconduct. This will give organisations an opportunity to

increase reporting rates and gain a better understanding of, and insight into, the ethics risks they face.

### 5.4.3   Track reports from a range of whistleblowing channels

> We have seen that employees world-wide prefer to report directly to management and this should be encouraged.

Global research (Penman, et al, 2019) found that reporting of misconduct increases dramatically when employees are provided with multiple channels for reporting. This gives employees a choice to report via the channels that they feel most comfortable with. We have seen that employees world-wide prefer to report directly to management and this should be encouraged. Employees also prefer to report through other channels such as HR, Internal Audit, and the Ethics Office before they consider reporting through the independent third-party ethics line. As stated before, such 'open door' reports should also be included in the whistleblowing management system to ensure a holistic view of reported cases. Not only will this assist in trend analysis, but management reports to ethics and other committees will be more accurate.

It therefore becomes important for the Ethics Office to engage with other functions to track reports. Organisations that work in silos may miss opportunities to analyse trends due to individual whistleblowing reports being filed by different departments.

### 5.4.4   Focus on decreasing case closure times

Case closure times influence employees' perceptions about the effectiveness of whistleblowing channels. Adherence to the Protected Disclosures Amendment Act (Act 5 of 2017) will go a long way in increasing pressure on organisations to adequately resource their investigations capacity. As mentioned before, the Act requires that organisations acknowledge receipt of reports and provide written feedback to the whistleblower about its intended action within 21 days of receipt. Employers are furthermore obliged to inform whistleblowers about the outcome of its investigations.

Ethics Officers should provide regular case closure metrics to ethics committees and the governing body to educate them on the risks associated with long case closure times. Anonymised success stories that demonstrate the positive impact of closing cases quickly and effectively, can also be used in this regard.

### 5.4.5   Remind employees about their duty to report misconduct

There are certain principles that underlie an employment contract, such as the duty to act in good faith and the duty of care, but organisations err by assuming that employees are aware of these often-unwritten obligations. These unwritten expectations and ethical duties should be made explicit in the organisation's code of ethics and related policies. Organisations must regularly remind their employees of their ethical obligations during ethics training, keep them front of mind by frequently breathing new life into communication and awareness campaigns, and promote understanding of the concept of 'derivative misconduct' – the offence that arises when an employee with knowledge of wrongdoing towards their employer fails to disclose this to their employer. Learning that they may be disciplined due to the wrongdoing of others can embolden employees who are reluctant to speak up.

### 5.4.6   Create trust about the protection of identity

> Human beings have a strong need to belong and employees face the threat of social ostracisation by their colleagues, communities, and family if they are seen as a snitch or a traitor.

Employees believe that if they provide credible information regarding a threat to the organisation, action will be taken – either by the person to whom they reported the misconduct, or someone to whom the report was escalated. Once the employee provided the information, they lose control over what happens and who gets to know what next. Human beings have a strong need to belong and employees face the threat of social ostracisation by their colleagues, communities, and family if they are seen as a snitch or a traitor. The prospect of social isolation in the workplace is a significant deterrent against speaking up. In addition, media news is punctuated by reports of courageous people who have called out their employers for wrongdoing and as a result suffered adverse professional and personal consequences.

Organisations therefore need to take all steps possible to protect the identity of whistleblowers, as well as the confidentiality of information. Limit the people who know the identity of a whistleblower and the content of the report. Ensure that all understand their

obligations in terms of the Protected Disclosures Amendment Act to protect the identity of a whistleblower (and that a breach of its regulations may result in disciplinary action). Train management on the handling of reports with the emphasis on the confidentiality of the information provided to them and encourage employees to use the confidential and anonymous ethics line if they fear exposure.

## 5.4.7    Commit to acting on reports

> Organisations need to commit to investigating all reported cases...It is often these reports that uncover serious misconduct or that can be linked to other reports of similar misconduct.

We saw that one of the main reasons for employees remaining silent about misconduct is because they do not believe that the organisation will act on their reports. This stems from their own and others' experiences and perceptions. Organisations need to commit to investigating all reported cases. Even reports that do not provide a lot of information, or is somewhat vague, should be followed-up. It is often these reports that uncover serious misconduct or that can be linked to other reports of similar misconduct.

Provide feedback to whistleblowers on the findings of investigations as per the requirement of the Protected Disclosures Amendment Act. And, on a quarterly basis, publish statistics organisationwide on internal communication channels about the number of investigations concluded as well as the category in which they fall. The purpose of publishing such statistics is four-fold, namely (1) sending the message that unethical behaviour is not acceptable, (2) that the organisation does not tolerate such behaviour, (3) anonymous reporters obtain assurance that their reports have been investigated, and (4) it serves as a deterrent to would-be perpetrators of the organisation's ethical standards.

## 5.4.8    Promote an open-door policy among management

Many people have an inherent mistrust of authority figures that may have nothing to do with how managers conduct themselves. Management often do not spend a lot of time explaining their actions to employees, which means that there will have been past misinterpretations of management's intentions and actions.

Management should ensure that they provide regular opportunities to employees to engage with them in an unrushed one-on-one manner regarding any concerns they may like to discuss. Management should encourage employees to be frank and open about their concerns and observations of misconduct. However, to gain the trust of employees they must act with integrity in all things and ensure that employees know what they stand for.

## 5.4.9    Commit to protecting whistleblowers from retaliation

Many whistleblowers raise their issue within their organisation in the belief that action would be taken. The first might be to their managers, and only later, if they do not see any action, to other reporting channels. All too often it happens that the whistleblower begins to experience negative feedback at work, such as receiving poor work reviews, being moved to meaningless tasks, or being relocated. They might even just be told to their face that they have unnecessarily 'rocked the boat'. More insidiously, they may become victims of 'smear campaigns' perpetrated by senior people to discredit and isolate them. There is also often a significant sense of being 'shunned', or ostracised within their work environment (and even social environment).

> Human beings learn from example and experience. Organisations therefore need to demonstrate to employees that they are committed to protecting them when they speak up.

With so much at stake, why would employees risk their futures and trust the organisation to protect them from adverse consequences for speaking up? Human beings learn from example and experience. Organisations therefore need to demonstrate to employees that they are committed to protecting them when they speak up. This should be done by having, and promoting, a non-retaliation policy that clearly identifies the different forms of retaliation, as well as the steps the organisation will take to address it. It is important to include in the policy that victimisers will be subjected to disciplinary action.

Ensure that everyone knows that retaliation for well-intended speaking up is unacceptable and against the law. Provide anti-retaliation awareness training to managers and make explicit the position that retaliation, as defined in the protected disclosures legislation, is unacceptable. Encourage employees in awareness campaigns and communication and training, to report retaliation via the ethics line or to the Ethics function.

| What actions can constitute 'occupational detriment'? | |
|---|---|
| The Act as amended defines as occupational detriment the threat or the carrying out of any of the following actions having an adverse impact on the employment status of an employee or worker in response to their making a protected disclosure | |
| Any disciplinary action | Refusal of transfer or promotion |
| Dismissal, suspension, demotion, harassment, or intimidation | Disadvantageous alteration of a term or condition of employment or retirement |
| Transfer against employee's will | Denial of appointment to any employment, profession, or office |
| Refusal of or provision of an adverse reference | Subjection to civil claim for the alleged breach of a duty of confidentiality arising from the disclosure of a criminal offence or a contravention or failure to comply with the law |
| AND / OR "being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities, work security and the retention or acquisition of contracts to perform work or render services." | |

*Protected Disclosures Amendment Act (Act 5 of 2017)*

## 5.4.10  Reward ethical heroes

Whistleblowers can face, among others, intimidation, harassment, dismissal, and violence in retaliation for speaking up.  There might be those who do it for the love of the country or their organisation, but for many people that do not outweigh the risks involved.  For this reason, the benefits of encouraging personal ethics in the workplace and rewarding those for taking a stand should be considered by organisations. The jury is still out about the advantages and disadvantages of incentivising whistleblowers with monetary rewards. And while that is a decision that organisations could consider, they should make concerted efforts to praise those who act ethically by blowing the whistle, and they should be meticulous about reporting on what actions they have taken on each reported misconduct.  The greatest reward for an employee who makes an input is to know that it has been considered and to see it acted upon where appropriate.

Organisations with strong ethical cultures outperform those without; their staff turnover tends to be lower and productivity higher and customers and investors increasingly seek organisations whom they believe behave ethically. In addition, research (Groenewald, 2016) has found that employees of organisations with strong ethical cultures feel less pressure to compromise organisational standards to achieve the organisation's goals. And if they do observe misconduct, they are more likely to feel comfortable and safe to report it, allowing the organisation to address issues early - saving the organisation time (from the distraction of a substantial issue) and money (in the form of legal fees, fines and penalties).

Strong speak up cultures go hand-in-hand with strong ethical cultures. The one cannot exist without the other.

> Strong speak up cultures go hand-in-hand with strong ethical cultures. The one cannot exist without the other.

Whistleblowing enables organisations to access hard-to-reach information that can help leaders to minimise a wide range of risks. It helps members of the governing body with their top priorities, namely ensuring good governance and establishing an ethical organisational culture. It is their responsibility to ensure that the management team creates an environment, and the required structures and processes to ensure an organisational culture that reduces risk and enhances transparency.

An effective, well-managed whistleblowing programme and system will ensure that risks and crises emanating from its own employees, are reduced, and timeously addressed. Early information about wrongdoing in the organisation enables management to address misconduct internally, or with expert help, before irreparable reputational harm, or harm to stakeholders, can occur.

The best managed whistleblowing programme and system can, however, only be effective if the organisation is, and is seen to be serious about addressing unethical conduct. Ultimately it is the action taken against transgressors, and not against whistleblowers, that will determine the success of an organisation's efforts to create a safe environment for reporting misconduct.

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# Whistleblowing Management Handbook

Whistleblowing enables organisations to access hard-to-reach information that can help leaders to minimise a wide range of risks. Unfortunately, many organisations still focus on the messenger and not the message. This causes potential whistleblowers to remain silent - thereby exposing the organisation and its stakeholders to reputational and financial risk. An effective, well-managed whistleblowing programme and system will ensure that such risks are reduced and addressed timeously.

The Whistleblowing Management Handbook focuses on factors that should be considered in designing an effective whistleblowing management programme and system. Whistleblowing is also contextualised within the broader governance and management of ethics in organisations. Matters that should be considered to ensure that an organisational culture is created where whistleblowers feel safe, are discussed.

The Whistleblowing Management Handbook provides practical guidance to persons in ethics, governance and management positions who have some form of responsibility for implementing whistleblowing programmes, whistleblowing management systems and investigating whistleblowing reports.

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