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Institutionalising Ethics Handbook

Making ethics real

Leon van Vuuren and Liezl Groenewald

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Whistleblowing Management Handbook (2020)

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This publication is dedicated to
Mr Colin Beggs
in appreciation of his tenure as (founding) Board member and his
unconditional support for the vision, values and activities of
The Ethics Institute.

Colin was educated at Grey High School and the University of Port Elizabeth where he completed a B.Com (Hons) and a CTA. He is a qualified CA(SA).

Colin was a partner in PricewaterhouseCoopers (PWC) where he was in charge of audits of major audit clients. He was also the PWC head of national education, computer audit and corporate finance. He was elected Senior partner and CEO from 1992 until his retirement in 2009.

During his tenure at PWC he served on a number of the global firm's technical and management committees. This included an eight-year term on the PwC Global Board and serving as Chairman of the Global Operations and Finance Committee.

Colin's active involvement in SAICA included several terms as chair of the Accounting Practices Committee, vice-chair of the Thuthuka Bursary Fund and chair of the Subvention Committee. He was chair of the SAICA Board in 2002/3.

Following retirement, Colin served as an independent director of, among others, the Boards of Sasol Limited, the Absa Group and The Ethics Institute.

He is married to Marian, and the couple has four children. He is a keen golfer and enjoys fishing and photography.

Thank you for reading the introduction to this handbook. We proudly present the ninth handbook in The Ethics Institute's handbook series.

The primary purpose of this handbook is to debunk the myth that organisations cannot really influence ethics, and that the best-case scenario is that 'ethics will (hopefully) happen'. The intention is to show how ethics can be institutionalised in organisations. In this offering, we will explain how ethics can be 'made real'. That is, how ethics can be 'taken to the people' involved in and with organisations.

After explaining the concept of institutionalisation we will contextualise it within The Ethics Institute's framework for the governance and management of organisational ethics. Thereafter, we will suggest the desired outcomes of organisations' efforts to institutionalise ethics. This is followed by a comprehensive description of potential proactive and reactive interventions that could be designed and applied to give life to institutionalisation. The handbook culminates with some guidelines on how interventions could be monitored and progress reported on.

Who could benefit from the contents? It is our contention that all organisations, irrespective of sector, size or manner of incorporation, are required to manage their ethics to contribute to the sustainable development of the the organisation itself, the economy, society and the natural environment. The handbook could be a useful companion to all those involved in the governance and management of organisations who take ethics seriously and have a formal or informal responsibility to make it happen.

On a personal note, we had fun writing this handbook. At first we were rather blasé about it, thinking that we deal with the topic regularly and that it would be easy to convert our thoughts to words on paper. As it turned out, this was not the case. It was challenging to meaningfully structure and populate the content to ensure clarity and utility.

I need to express gratitude to my dear colleague and co-author, Liezl Groenewald, for her unwavering approach to fighting the good fight. In this book she contributes her unique expertise. Kris Dobie, Fatima Rawat and Paul Vorster, the authors of the sections on promoting ethics in the supply chain, implementing ethics codes and policies, monitoring and reporting ethics management interventions, and ethics in recruitment and selection, deserve special credit for sharing their insight.

Leon van Vuuren
September 2021

1.1 Introduction to institutionalising organisational ethics

Integrity is an inherent human characteristic located within human beings. As a construct, integrity is intangible and difficult to measure. Should people lack integrity though, others might see unethical behaviour emanating. Conversely, if one has integrity, others will observe ethical behaviour. The key word here is *behaviour*, or conduct. We cannot do much about others' integrity, but we can certainly influence their behaviour for the better. In essence, this is what ethics institutionalisation is about.

The concept of institutionalisation is somewhat controversial, to the extent that it could be interpreted as 'indoctrination'. It cannot be denied that through their institutionalisation efforts, particularly when it includes words such as 'zero tolerance' or 'must', organisations may appear to force their employees and suppliers to be ethical. Push-back can certainly be expected. Therefore, circumspection is necessary prior to walking the tightrope of embedding ethics in an organisation whilst avoiding perceptions of coercion or manipulation.

> 'Making ethics real' simply means preventing decent people from doing stupid things.

In itself, 'institutionalisation' is somewhat of a tongue-twister. One could simplify this by also referring to the concept as *'making ethics real'*, which conveys the term in an understandable manner and eliminates potential negative connotations. In a nutshell, it simply means preventing decent people from doing stupid things.

There are still many organisations whose attempts at managing ethics are thought to be sufficient if they have a code of ethics and a safe reporting (whistleblowing) facility. Efforts cannot end with this though. Ethics expectations and standards need to be 'taken to the people' who matter to the organisation. In other words, those who affect the organisation or who can be affected by it, namely the primary stakeholders. Aspirations and directives captured in codes and policies are merely words on paper until made real. This activity comprises the reason for the organisation taking an ethics stance, what this stance is, how it will be applied and what each stakeholder's responsibility is to this effect. This is the crux of institutionalising ethics or making it real.

As alluded to earlier, it is naïve to assume that ethics will take care of itself. Organisations need to employ a concerted and structured approach to ensure that they achieve

the goals set for ethics management and a resultant enhancement of ethical culture. Although those tasked to manage ethics in their organisations likely have instinctive ideas of how to go about it, this handbook could add structure and substance to their thoughts and enthusiasm.

1.2   Institutionalisation and the triangular definition of ethics

It is now accepted as a given that the extremely simplistic definition of ethics as used by TEI can guide general thinking on what is required to manage ethics. If it is accepted that ethics can be defined around the three core concepts of the 'good', the 'self' and the 'other' (as displayed in the diagram below), ethics then implies that one is ethical when one does not only consider what is good for oneself, but also considers whether what is 'good' for the 'self' is also good for 'others' (Rossouw & Van Vuuren, 2017:5). This understanding of ethics is well reflected in the golden rule that can be found across the world, which states that one should do good to others, as one expects others to do good to oneself.
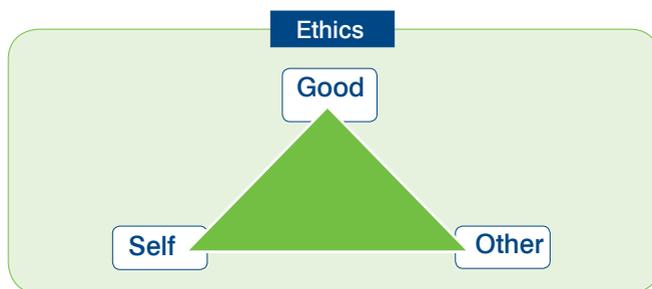
Core concepts in the definition of ethics
(Rossouw & Van Vuuren, 2017:5)

If the definition is applied to organisational ethics, the content of the 'good' is represented by codes of ethics and policies. For the purpose of the theme of this handbook, the 'self' is the organisation and the 'other' are employees and other stakeholders such as suppliers and clients. A challenge pertaining to the management of organisational ethics is to continually balance the relationship between the self and the other. Institutionalising ethics is the collective term for specific, tangible interventions that are conceptualised and implemented to maintain the sometimes precarious balance between the aspirations of the organisation and those it affects.

1.3 The institutionalisation imperative

Besides doing good for the sake of it, organisations are compelled by legal and governance standards to manage their ethics. By implication, institutionalisation is an integral part of ethics management. In South Africa, for example, the Companies Act of 2008 (as amended) compels a large range of organisations to have a committee at board level (a Social and Ethics Committee) which should oversee ethics management (CIPC, 2011). A primary function of such a structure would be to ask the right questions regarding the existence, monitoring and progress of the organisation's ethics performance and to commission appropriate reporting to this effect. Ethics performance will by nature include ethics management and institutionalisation interventions.

The Fourth King Report on Corporate Governance for South Africa (King IV) supplements the Companies Act and other local and international legislation with guidelines on the governance and management of ethics in organisations. It states clearly in its second governance principle that:

Principle 2
The governing body should govern the ethics of the organisation in a way that supports the establishment of an ethical culture.

(IoDSA, 2016: 44)

The box below displays the recommendations of King IV, namely, that organisations should institutionalise their ethics (please pay specific attention to paragraphs 9a and 9b):

9. The governing body should exercise ongoing oversight of the management of ethics and, in particular, oversee that it results in the following:

a. Application of the organisation's ethical standards to the processes for the recruitment, evaluation of performance and reward of employees, as well as the sourcing of suppliers.

b. Having sanctions and remedies in place for when the organisation's ethical standards are breached,

c. The use of protected disclosure or whistleblowing mechanisms to detect breaches of ethical standards and dealing with such disclosures appropriately.

d. The monitoring of adherence to the organisation's ethical standards by employees and other stakeholders through, among others, periodic independent assessments.

1.4 Contextualising institutionalisation

The model for ethics management in organisations, proudly developed by The Ethics Institute, features institutionalisation as a prominent and indispensable step in the ethics management process (see diagram below).

The governance of ethics framework ©The Ethics Institute

As can be seen from the framework, there are certain things that need to happen before ethics can be meaningfully institutionalised. The foremost task of those responsible for ethics management in organisations is to assess the organisation's ethics opportunities and risks and then design an ethics management strategy and ethics management plan. Subsequently, as the next step in the framework, codes of ethics and other supporting ethics-related policies are developed or amended.

Only then does it make sense to venture into the realm of institutionalising ethics. Thereafter, the effectiveness of institutionalisation interventions is monitored. This includes an assessment of the adequacy and effectiveness of institutionalisation. This assessment then needs to be reported on to the relevant governance and management structures that were delegated with the responsibility of overseeing ethics management and positively influencing the ethical culture of the organisation.

1.5 Functionaries responsible for institutionalisation

The responsibility for the institutionalisation of ethics lies with the ethics management function (ethics office) and its enabling partners.

(Please see TEI's Ethics Office Handbook, TEI 2018, for a comprehensive explanation of the specific roles of the ethics office and its enabling partners.)

Enabling partners

- Ethics ambassadors
- Company secretariat
- Risk management
- Internal audit
- Forensics
- Legal
- Compliance
- Corporate communication
- Human resource management
- Employment relations
- Organisation development
- Human resource development
- Employee wellness
- Procurement
- Public relations

Line managers are at the frontline of managing ethical behaviour and assisting the ethics office and ancillary functions to implement ethics management systems. Prerequisites for line managers being ethically effective in their specific contexts and spheres of influence are an awareness of the business case for ethics, ethical sensitivity, ethical courage, walking and talking ethics (leading by example) and making ethical decisions. Line managers are, as such – and assuming that they have personal ethical credibility – in a position to create an enabling environment for employees to think and act ethically without fear of reprisal.

At a practical level, they are responsible for implementing ethics management interventions and thus for institutionalising ethics. Since they are in continuous close contact with employees, line managers play a particularly crucial role in making ethics real. To fulfil these expectations, they need to closely collaborate with the ethics office and ethics ambassadors to implement proactive and reactive institutionalisation interventions. *(Please refer to the Ethics Ambassadors' Handbook, TEI: 2021).*

1.6 Categorisation of interventions

Each person who enters an organisation as an employee or engages with the organisation as a stakeholder, has a rather unique set of values. To firstly influence behaviour and to thereafter positively influence values is a time-consuming process. Since it takes time and due to resistance to change, this can be a highly frustrating exercise for organisations. Institutionalising ethics is no easy feat, particularly when the organisation has to start from an underdeveloped sense of the importance of ethics, and what is required to manage it. Influencing ethics through institutionalisation efforts is an indispensable catalyst to propel the organisation to a more mature ethical culture.

> To influence behaviour and to thereafter positively influence values is a time-consuming process.

Every organisation has the prerogative to apply interventions aimed at making ethics real which they can afford and for which they have the necessary competence. As will be illustrated in Part 2 of the handbook, different interventions may have different results and impacts. It is suggested that organisations decide upfront what it is that they would like to achieve in terms of ensuring compliance and building ethical cultures. Such a decision will determine the scope and depth of each intervention.

There are generally two categories of interventions aimed at changing behaviour and influencing values. The first is referred to as *proactive interventions* and includes those that are aligned to a desire to do the right thing in a timely manner. Proactive interventions are usually values and integrity based. They are applied to make employees and other stakeholders ethically aware and savvy.

Such interventions *promote* ethical behaviour by ensuring that where possible, only good apples are 'allowed into' the organisation. These values-based systems and procedures protect and enhance the organisation's ethical reputation. They also equip people to raise their levels of ethical reasoning and to make sound ethical decisions – in other words, they contribute towards the development of an ethics competence.

Reactive interventions are underpinned by rules and compliance.

The second category is labelled as *reactive interventions*, which figuratively speaking represents the dark side of ethics management and institutionalisation. Reactive interventions exist to be applied after the fact, that is, after unethical behaviour has occurred. There are many ways to get the ethics message across to employees. Unfortunately, one way is to learn from others' mistakes, transgressions and punishment. Reactive interventions are designed to do exactly this and are thus underpinned by rules and compliance. This category of interventions, albeit that they are designed to *prevent* unethical behaviour, nevertheless have a significant contribution to making ethics real.

The preferred state is, however, to invest time and resources in proactive interventions, and to only employ reactive interventions as (1) a last resort to deal with ethics transgressors, and (2) to prevent further ethics fallout and reputational damage. There is much that organisations can do in a positive and uplifting manner before having to resort to reactive measures.

Both proactive and reactive interventions could be based on:

- intrinsic human motivation, which can be stimulated by self-discovery (experience) and persuasion (conversation), or
- extrinsic human motivation, which can be stimulated by punishment (fear) and reward (incentives).

Although there may be exceptions, proactive interventions are generally based on intrinsic motivation and reactive interventions on extrinsic motivation.

A 'menu' of typical interventions is presented in the table below. These will be elaborated on in detail in Parts 3 and 4 of this handbook.

Proactive interventions	Reactive interventions
Communication and awareness	Safe reporting
Recruitment and selection	Ethics investigations
Training and development	Discipline
Performance and recognition	Ethics fallout strategy
Ethics advice	Transgressors' databases
Promoting ethics in the supply chain	
Implementation of policies	
Ethics management information systems	

2.1 The question

An ethical culture consists of the shared beliefs, values, expectations and norms that manifest in observable behaviour, and are expressed in ideas and decision-making. It can be said that the culture of an organisation is its personality and character that is created through consistent and authentic values expression and behaviours, and not necessarily by mere compliance with legislation, regulations, rules, or policies and procedures. It can also be described as an ethics mindset or as an ethics consciousness.

Institutionalisation of ethics has both an ethical culture and a compliance to ethics standards dimension. Efforts to make ethics real may thus have an outcome of a stronger ethically culture and/or enhanced compliance to ethical standards.

There is a widely shared belief amongst organisational ethicists that a values-based ethical culture is more sustainable than mere compliance to standards as stipulated in rules and policies. This is easy to understand – organisational ethics is complex, and rule-following behaviour cannot on its own ensure long-term mindsets and consistency in ethical behaviour. The question, however, is whether a focus on creating a values-based culture excludes all components of a rules-based (compliance) culture. In other words, are ethics and compliance mutually exclusive? This part of the handbook addresses this question.

2.2 Compliance and ethics

It is an undisputed fact that ethics permeates all aspects of an organisation – from decision-making, behaviour, accounting practices, risk management to supply chain management, to name but a few. Nevertheless, it is ultimately the prerogative of leadership to decide how the organisation will manage its ethics. Will they do so superficially by simply 'ticking boxes', or are they committed to ensuring that the organisational values are deeply ingrained?

'Ticking the box' is usually associated with compliance. In other words, the organisation has all the elements of an ethics management programme, such as a code of ethics, ethics-related policies, training and awareness focused on compliance with the policies, and safe reporting facilities. However, although 'ticking the box' has traditionally

been associated with a superficial approach to instilling the values of an organisation, it has changed over time. Organisations that focus on compliance are in fact committed to monitoring and managing their ethics performance and ensuring that stakeholders abide by their ethical standards. They make a conscious decision to enforce ethics and eradicate unethical behaviour. These organisations typically have a *'zero tolerance'* approach to unethical behaviour. The focus is on rules that must be complied with to avoid punishment. Employees are thus extrinsically motivated to follow the rules for fear of being caught by those who can potentially catch them.

Other organisations may decide to rather ensure that their values and ethical standards are embedded in employees' behaviour and decision-making, thereby ensuring that these standards are internalised. Instead of forcing ethical standards on employees, the organisation rather seeks to obtain their commitment to these standards. The aim of ethics management programmes in these organisations is to create a culture where employees are intrinsically motivated to live the organisation's values, thereby taking responsibility for their decisions and behaviour. Members of organisations who take a values-based approach to organisational culture do the right thing because they believe that it is the right thing to do. They do not need someone to watch them continuously.

The table below depicts, at the two ends of a spectrum, the difference between a purely compliance-based approach to ethics management and a purely values-based approach.

COMPLIANCE-BASED Extrinsic motivation Somebody is watching…	VALUES-BASED Intrinsic motivation Nobody is watching…
Preventing unethical behaviour	**Promoting** ethical responsibility
"Zero tolerance" (**fear-based**)	"The way we do things" (**conviction-based**)
Catching those **who do wrong**	Catching those **who do right**
Compliance/rules dominate	**Integrity/values have primacy**

2.3 Linking ethics and compliance

Chief Justice of the U.S. Supreme Court, Potter Stewart once stated: "Ethics is knowing the difference between what you have the right to do and what is right to do" (Coffey, 2013). This is, in essence, the main distinction between ethics and compliance, two concepts that are otherwise often closely related.

> Ethics requires that individuals rely on their own personal judgement to distinguish between right and wrong.

These two concepts are linked by a common denominator, namely the need to explain and influence the way in which people at work behave ('doing the right thing'). The approach to this, however, can be completely different. Whereas ethics implies that people will behave in accordance with a system of common values that are agreed and shared, compliance means that people must do what they are told to do, either by law, regulations, or policies and procedures. It follows that ethics requires that individuals rely on their own personal judgement to distinguish between right and wrong, and question why they are encouraged to behave in a certain way. This requirement is particularly pertinent when rules do not cover all ethical challenges. Such considerations are far less prominent in the definition of compliance.

According to the Cambridge Dictionary of Business English, compliance is "the act of obeying a particular law or rule, or of acting according to an agreement". Compliance programmes thus aim to *prevent* and *detect* unethical behaviour, while ethics management programmes aim to *promote* ethical behaviour.

Ethics	Compliance
• A system of accepted beliefs that control behaviour, especially based on values • The study of what is morally right and what is not	• The act of obeying an order, rule or request (formal) • The state of being too willing to do what other people want you to do (mainly disapproving)

Definitions of 'ethics' and 'compliance' from the Cambridge Dictionary of Business English

Whereas the definition of compliance is focused on laws and rules, the key element of organisational ethics is values. By definition, the law, regulations and policies consist of a number of norms that constitute mandatory rules of behaviour which apply to all members of an organisation. It can be argued that these norms are closely related to ethical values, in the sense that these rules represent the expression of the values that guide organisations. Ethical culture and compliance controls are therefore interdependent and mutually reinforcing. When an organisation promotes an ethical culture, it reinforces the importance of compliance *controls*; and when it enforces the organisation's controls, it reinforces the organisation's *culture*.

As has been stated in section 1.3 of this handbook, Principle 2 of King IV (IoDSA, 2016) requires the governing body to ensure that an ethical culture is established. This is achieved by the effective implementation of an ethics management programme that is underpinned by the organisation's values and ethical standards which should influence every dimension of an organisation's culture. Such a values-based approach comprises proactive interventions that focus on the promotion of ethical behaviour.

> Compliance with organisational policies and rules will then also lead to adherence to the organisational values, and vice versa.

However, a values-based approach is mostly aspirational and relies on consistent communication, awareness creation and training to ensure that an organisation's stakeholders have a common understanding of the meaning of ethics as applied in the organisation. To ensure practicality, organisations must have policies that are aligned with the implicit expectations inherent to the organisation's values. Compliance with organisational policies and rules will then also lead to adherence to the organisational values, and vice versa.

For example, an organisation might have 'respect' as one of its values, which is underpinned in the code of ethics by a conduct provision of 'we refrain from harassing colleagues, clients, suppliers and other stakeholders'. To ensure that the latter is enforceable and to prevent risks associated with non-compliance with this ethical standard, a policy is required to provide clear guidelines about what harassment entails, the different types of harassment and the sanctions that will be imposed if the policy (and the related conduct provision in the code of ethics) is transgressed.

Compliance with this policy implies alignment to the value of respect, and this, in turn, would resul in compliance with the policy.

Non-compliance with an organisation's ethical, legal and regulatory standards can have dire consequences for organisations. Not only can it cause reputational harm, but it can also result in penalties and fees issued by regulatory authorities, a decrease in market share or criminal prosecution of transgressors. It is therefore important that organisations, besides employing *proactive* ethics interventions, also implement *reactive* ethics management interventions aimed at 'catching those who do wrong' and sanctioning them for doing so. Different interventions to institutionalise ethics will thus have different results and impacts.

The most important interventions to detect non-compliance to the organisation's values, policies, applicable laws and regulations are found on the reactive spectrum of ethics management, namely safe reporting mechanisms, investigations and disciplinary measures. These are discussed in more detail in Part 4 of the handbook. By effectively institutionalising ethics standards, the organisation demonstrates its commitment to establishing:

i.   an omnipresent ethical culture, and
ii.   a shared awareness of the rules and laws that apply to it whilst taking reasonable, sincere steps to stay on the right side of those rules and laws.

2.4 Institutionalisation: culture and compliance

> Clear parameters provided by rules, policies and procedures are required for guided decision-making and a uniform approach to behaviour.

The purpose of institutionalising the ethical standards of an organisation is to create a culture where stakeholders have a common understanding of the shared values that should underpin their behaviour and decision-making. This is obviously good; however, without rules and policies to guide specific behaviours, employees are left to their own devices to decide what is right and what is wrong. There is even a possibility that unethical conduct could increase due to employees abusing their discretion.

Clear parameters for behaviour are therefore required. Such parameters provided by rules, policies and procedures and compliance with these parameters will result in guided decision-making and a uniform approach to behaviour. This should contribute greatly to the formation of a strong ethical culture.

Ethics and compliance are thus not mutually exclusive. In fact, a limited form of a compliance approach provides a safety net to protect organisations against scandals and ethical lapses.

3.1 Proactive interventions: an overview

The philosophy behind proactive interventions is to *promote ethical behaviour* and build strong ethical cultures. However, proactive interventions also have a useful by-product, which is the prevention of unethical behaviour. Proactive approaches by nature contain overt and subtle messages that make people aware of the types of behaviours that are undesirable.

> Proactive interventions are based on efforts to remind people of their obligations to think and act ethically.

The main thrust of proactive interventions is that they are based on efforts to remind people of their obligations to think and act ethically. It is crucial that proactive interventions are designed and implemented to make the organisation's ethical *values real*. If words such as transparency, accountability, fairness and honesty, which are typical concepts that feature in values statements, are not made real they will remain words on paper. Interventions should be aimed at helping employees, suppliers and other stakeholders to make sense of the organisation's values and ethical standards by being assisted to understand which tangible and visible *behaviours* are expected outcomes of abstract values.

In the remainder of this section, a range of typical constructive interventions that may positively affect ethical cultures are presented.

3.2 Communication and awareness

> Unethical conduct needs to be prevented proactively by communicating the ethics standards of the organisation.

The purpose of ethics communication and awareness is to clearly communicate the ethics standards and expectations of the organisation to its internal and external stakeholders. Through these proactive interventions, ignorance about desired ethical behaviour is removed and trust is built in the organisation.

On the other hand, trust is eroded by unethical conduct in and by organisations. Unethical conduct thus needs to be prevented proactively by communicating and

creating awareness of the ethics standards of the organisation. Employees and other stakeholders need to know what is right, what is wrong and how they should keep on doing right. Organisations have a responsibility to: (1) communicate their expectations of ethical behaviour as espoused in their code of ethics, values and ethics-related policies; (2) ensure that these standards, values and policies are uniformly understood and applied; and (3) ensure that leadership is committed to the ethical standards of the organisation and visibly and audibly support it.

However, the responsibility to communicate does not only lie with the organisational leadership. Employees also have a responsibility towards the organisation, namely, to inform the organisation of:

- good-news stories,
- the types of ethical issues that they are confronted with, and
- unethical conduct in the organisation.

The organisation's ethics expectations can be communicated through communication and awareness programmes or campaigns, while employees can communicate their questions or concerns through an ethics advice line/helpdesk.

Recognising the ethical implications of decisions and actions is the first step in ethical behaviour.

Given the complexity of work environments, it is vital that employees are able to recognise and address ethical issues as they arise. Recognising the ethical implications of decisions and actions, as well as their potential ethical consequences, is the first step in ethical behaviour.

A communication programme requires resources, time and cross-functional cooperation. The ethics office(r) may have innovative and creative ideas to communicate the organisation's values and code of ethics, however, it will be fruitless if buy-in and support lack from the top. A successful communication plan starts with engaging the governing body and senior management, who all play a role in communicating the organisation's commitment to ethical behaviour.

Developing a communication and awareness strategy

A code of ethics, organisational values and an ethics management strategy and programme require a comprehensive communication strategy to ensure that all contracted stakeholders are reached effectively. Sending an email with a link to the code of ethics is not enough.

Before developing a communication and awareness strategy, the ethics office(r) should conduct a communications audit with the purpose of understanding:

- The audience;
- How information is usually disseminated;
- Whether the messages are understood and believed;
- What channels are most effective; and
- Which functions should receive customised messages, such as procurement where the risk of corruption is high.

Understanding the above will determine the most applicable and effective channels for communication and whether new channels should be established. In addition, knowing one's audience will ensure that the communication and awareness strategy is more than just a monologue about ethics, but rather a dialogue by using the most effective channels to communicate with employees.

Useful questions

- Are employees aware of the organisational values and ethical standards? Are they positive about these standards?
- Consider your industry and workforce. Is it primarily comprised, for example, of auditors, or miners?
- Is the organisation recovering from an ethical lapse, or does it have a strong ethical culture?
- What is the age range you want to reach? What is the predominant language? What are the educational levels of the intended audience?

Answers to the above will ensure messages and communication channels to different audiences are fit for purpose. A poster campaign in English, for instance, might not have much impact in a mining environment where the dominant language is isiZulu. In such a case, it could be better to rather use short WhatsApp messages in isiZulu to familiarise employees with the ethical standards of the organisation.

A communication strategy is a living document that might require additions or amendments over time to address new ethics risks and challenges. Communication about ethics should remain fresh, engaging and interesting to prevent 'ethics fatigue' and complacency about the ethical standards of the organisation.

What should a communication and awareness strategy address? The Institute of Business Ethics (Bradshaw, 2015) suggests a few areas for consideration:

- The objective
- How success is defined and measured
- Key messages
- Audience / stakeholder mapping
- Channels
- Approval processes and responsibilities
- Timing

> Ethics communication needs to 'catch the eye', stand out from other organisational communication, create interest and stimulate conversations about ethics.

Ethics communication needs to 'catch the eye', stand out from other organisational communication, create interest and stimulate conversations about ethics (ethics talk). The following should be considered in developing ethics communication messages and awareness material:

- *Message and tone*
  - Identify the aim of the message, e.g., should it create action (blow the whistle), inform (read the code), or motivate (live the values)?
  - State the intention of the communication clearly to harness better buy-in from employees.
  - Avoid the use of use phrases such as 'employees must never', 'it is prohibited to' or 'it is mandatory for employees to'. Such a punitive tone could create distance between employees and the organisation.
  - Frame the benefits of ethical behaviour in a positive, rewarding manner by explaining why certain behaviour is desirable, rather than focusing only on what employees must do (the latter being equal to a compliance- or rules-based approach).

- *Humour*
  - Although ethics is a serious subject, humour can go a long way in creating a shared understanding of the organisational values and ethical standards.
  - Be sensitive however to cultural sensitivities and offensiveness.
  - Make ethics fun by, e.g., having an ethics mascot included in all ethics-related messages, parodying popular TV shows (e.g., Cisco developed an 'Ethics Idol' and Texas Instruments 'Agent Doo-little' which is based on the X-files), industrial theatre productions with quirky characters, ethics 'bake-offs' with cakes decorated along ethical themes, or competitions where employees submit their own videos that can be used in a communication campaign.

- *Channels*
  - An ethics audit would have determined the channels that have been used or are generally used to communicate ethics messages. These could include messages via the following channels: face-to-face (e.g., training, speeches, ethics cafés and toolkits); electronic (such as intranet, e-learning, emails, blogs and social media); print (e.g., newsletters, code of ethics and policies); and workspace (e.g., posters, trinkets and toys, or plasma screens in public spaces or cafeterias).
  - Identify channels that have been over-used for organisational communication purposes and rather utilise multiple channels for different audiences to ensure the right messages reach the intended target audience.
  - Consider the working environment. Some employees may be desk-bound, others may be on the road or not have access to technology or smart phones.
  - Spread ethics communication across different channels to ensure optimal distribution and buy-in.

While the ethics office(r) in collaboration with the organisation's communication and marketing department would have the main responsibility for developing and implementing ethics communication and awareness strategies, the responsibility is not theirs alone. Organisational leadership has as an important role to play.

The **governing body and senior leadership** needs to set the tone at the top by:

• Referring to the values and ethical expectations of the organisation when addressing employees, whether through speeches, presentations, blogs, newsletters, emails or town halls. The Chief Executive Officer is not only the Chief Ethics Officer, but also the Chief Engagement Officer. Communicating ethics should always be part of the CEO's employee engagement.

• Celebrating ethical success and highlighting ethical failures or challenges in their own words. Employees quickly learn when messages have been crafted by ghost writers.

• Including messages by the Chair and the CEO in the preamble to the code of ethics and ethics newsletters.

• Surprising employees by appearing in the organisation's social media feed where the values and ethical standards are pertinently mentioned.

• Introducing ethics training videos with a message by the CEO or Chair of the governing body.

• Using podcasts with messages from the CEO and other members of the executive management team.

• Playing videos or audios with messages about the ethics of the organisation in workspaces.

• Participating in 'road-shows' to regional offices.

• Aligning communication about organisational objectives with the organisation's values.

> … The tone comes from the top
> … the tune is played in the middle
> … and the beat of feet happens at the bottom
>
> Judge Mervyn King

It is unfortunate that the role and responsibilities of middle-management are often forgotten in the development of communication and awareness campaigns. Line managers play a crucial role in setting an example and communicating the organisational

values. Line managers are the people who most employees engage with on a daily basis. They therefore have a huge impact on employees' behaviour. 'The message from the middle' is as important as the 'tone from the top'.

Managers need to be empowered to cascade ethics messages to their teams. Line management should be trained on how to facilitate discussions about ethical issues with employees in their sphere of influence. At a minimum, managers should discuss ethical issues once a month with their subordinates, on the condition that these discussions are not superficial, but impactful. It is important that buy-in from this tier of management is secured by:

- Explaining to line management why and how the organisational values and ethical standards align to the organisational vision and strategy.
- Including ethical values in the performance management system; in other words, it is not just what managers do, but how they do it.
- Framing the organisational values as a positive contributor to the organisation so that line management, who are often under huge pressure to perform, can understand the importance of ethical decision-making and encourage their teams to do the same.
- Providing line managers with easy-to-use communication tools that include an ethics vocabulary. Not all people are good communicators – some require guidance to communicate effectively.

An ethics communication and awareness strategy is one of the most important ways to enhance an ethical organisational culture. Once-off interventions, however, will have little impact. The ethics office(r) should develop a sustainable ethics communication strategy that is included in their annual planning. A variety of messages disseminated through multiple channels will ensure that ethics messages remain impactful, fresh and exciting.

3.3 Recruitment and selection

Ensuring that only the good apples enter the barrel is the primary purpose of good recruitment and selection processes. Recruitment and selection processes should contain interventions to protect the barrel or guard the front door of the organisation from those with undesirable or unethical predispositions who may harm the ethical values and vision of the organisation. Such processes allow organisations to select the best

candidates in terms of job requirements, while also allowing for the selection of employees who are aligned to the organisation's values and ethics. Many organisations have been critically affected by selecting wrong (or ethically risky) leaders, managers or employees.

Recruiting ethical employees

Organisations that seek to employ people who possess high levels of integrity should send a clear message in this regard during recruitment processes. Employers should state clearly that only job seekers who can identify with the ethical values of the organisation are welcome to apply. In this way, an organisation can place an ethics stake into the ground.

Recruitment processes start with the pool of candidates from whom the organisation can choose prospective employees. The quality of recruiting pools, in turn, has much to do with the ethics and perception of ethics across the jobseekers.

Good organisations attract more good apples.

Important to note here is that, in the same way as organisations select employees to take up job roles, employees often select organisations they want to work in based on whether they perceive that their values and ethics are aligned with those of the organisation they are applying to. In this way, individuals who apply to the organisation are not just applying for the job, but are also applying to the organisation and what it stands for. It is therefore imperative that the organisation searches for a quality pool of candidates from whom it can select its employees. Just as good organisations attract more good apples, bad apples may be attracted to organisations with a poor ethical reputation.

Taking the above into consideration, once a pool of potential candidates has been identified, the organisation has the responsibility to select the right person(s) for the job, in terms of both job competence and potential ethical behaviour. In this section, techniques that can evaluate and discriminate between individuals' integrity (ethical predispositions) are presented.

Background and reference checking

Background checks (often also referred to as reference checking) is a process by which the organisation evaluates the job-related experience and character of a prospective

employee by evaluating certain reference criteria provided by the candidate. This is usually accomplished by evaluating the candidate's references, and checking whether the candidate has legitimate credentials (i.e., qualifications and experience). Although background checks are not foolproof, they do allow the organisation to evaluate the basic information and job history of the candidate.

References provided should be consulted on the reliability, honesty and trustworthiness of the job candidate. It is important to bear in mind that references provided in the job application of the candidate may be limited to people whom the candidate believes will provide him or her with good references (i.e., this process is somewhat biased). The prudent organisation will read between the lines and pay attention to not only what is presented in the job application but also what may be missing. See the table below for some indicators that need to be evaluated when engaging in background and reference checking.

Reference checking can determine whether:

1. Any strange gaps in the job history of the candidate may be ascribed to ethical lapses.
2. The references provided are colleagues or friends or managers/supervisors who have had experience managing the candidate – candidates may use their colleagues, or managers/supervisors who have not directly managed them as references to hide previous ethics transgressions.
3. There are people not mentioned in the job application who may provide insight into the job candidate's integrity.
4. There is anything not said about the candidate from converstions or correspondence with references. The organisation has to be sensitive to aspects that previous employers do not want to discuss, as these may indicate potential ethics-related red flags.
5. The qualifications presented in the job application are genuine.
6. The job candidate has been blacklisted in any way. This is especially important when candidates apply for jobs where they may have access to large sums of money or other financial instruments.

The job interview

Individuals who are manipulative, charming and intelligent often present very well in the selection interview and look 'leaderlike'. They often take charge, command the room, present only their best characteristics, are outspoken and appear confident. These characteristics are often valued in most employees and highly valued for management and senior leadership positions. Unfortunately however, these presented traits are often a smokescreen which creates the illusion of integrity and capability. Many destructive employees who have been selected into organisations have performed exceptionally well in interviews.

Interviewing for integrity: Topics for inclusion in the job interview

1. *Asking the candidate about past failures and what he or she may have learned from them* (it is important to determine whether a candidate can own up to past mistakes).

2. *Evaluating whether the candidate understands ethics:*

   a. Does the candidate know the difference between ethics and the law?

   b. Does the person understand why ethics is important for the organisation?

   c. Did the candidate read and evaluate the organisation's values and ethical standards, and does he or she understand them?

   d. Does the person understand the difference between an ethical challenge and ethical dilemma?

3. *Evaluating whether the candidate can resolve an ethical challenge or dilemma related to the job.*

Job simulations and assessment centres

Job simulations are practical real-life situations given to employees to determine whether they would be able to do the job. For example, for an administration position we may

want to know whether someone can open and answer emails efficiently, whether the person can write up minutes of a meeting, solve a job-related problem or can complete any other type of real-life task related to the job. Usually, several raters (i.e., individuals who understand the tasks and the job role) evaluate the candidate based on certain objective job task criteria (i.e., criteria that evaluate whether the person can do the job effectively).

Job simulations generally have very high validity. The measurement of integrity can easily be overtly or subtly incorporated into such simulations and can be used to evaluate whether the candidate:

- can identify an ethical challenge or dilemma presented (ethical sensitivity and awareness),
- actively takes action to resolve the ethical challenge or dilemma (ethical agency), and
- whether the individual can solve the ethical challenge or dilemma in the most effective manner (ethical decision-making).

An important requirement here is that the ethical challenge or dilemma is well selected to encompass the type of ethical challenge an employee in this job would likely encounter.

Example of an ethical challenge provided to a candidate

You are at a business meeting with business partners from another country. It is customary for people from this culture to give and receive gifts. This is not considered bribery or facilitation, but rather good manners in this country.

Based on the gifts policy of the company, how will you react when you arrive at the meeting and the business partners present you with a valuable golden watch as a gift?

The example above can be worked into an inbox exercise or other form of business decision-making exercise. It is important, however, that the answer in this case considers the policies, rules and procedures of the organisation (which the candidate should have

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access to). Of course, organisations need to assess the extent to which candidates can suggest solutions that mitigate the possibility of being viewed as disrespectful while still doing what is right and in line with the organisation's values and standards. However, *how* candidates get to the solution, i.e., the type of reasoning that they display, may be a key indicator of an ethics competence.

Psychometric testing

Psychometric testing is considered to be one of the most objective and valid assessment methods for identifying high-performing employees. Psychometric tests are any type of assessment method that measures some type of psychological construct.

> Counterproductive work behaviour assessment is often referred to as 'integrity testing'.

Psychometric tests that measure counterproductive work behaviour also exist. Counterproductive work behaviour assessment is often referred to as 'integrity testing'. However, 'integrity' as defined by these measures usually refers to observable behaviours that may harm productivity or relationship harmony in the organisation.

Counterproductive work behaviour includes aspects such as anti-social behaviours (i.e., intimidation, bullying, manipulation and aggression), theft and the abuse of organisational resources, and the propensity of dark triad characteristics (psychopathy, narcissism and Machiavellianism).

Generally, two types of these assessment methods exist. The first type is referred to as *overt integrity testing.* Overt integrity tests require those who are assessed to answer questions related directly to whether they may have engaged in counterproductive work behaviour in the past. Unfortunately, such tests suffer from social desirability bias and test-taker deception, as the candidate attempts to put the best foot forward. Think about the following for example. If someone asked you in a job interview whether you have ever stolen money from your organisation, or wasted time while at work, would you say 'yes'? The same applies to job seekers.

A second type of integrity test is referred to as *covert integrity tests*. Such tests mitigate the problems of overt integrity tests. In covert testing the candidate is not aware that he or she is being evaluated for counterproductive work behaviour. In other words, the

candidate is given an assessment measure that seems innocuous and usually measures standard behavioural and personality tendencies that most people will answer honestly without a second thought. The survey then correlates those personality traits with a propensity for counterproductive work behaviour.

Covert tests measure personality traits that relate to a propensity for counterproductive work behaviour. These covert integrity tests are highly valid and often do not fall victim to social desirability bias as is the case with overt integrity tests.

Controversial measurement methods

Two types of widely used, yet controversial assessment methods are lifestyle audits and lie detector testing (also called polygraphs).

•   Lifestyle audits

Lifestyle audits are usually evaluations of the income and lifestyle of the employee and are often not used in a proactive manner, but rather a reactive one. Generally, the idea is that an employee's disposable income and lifestyle (i.e., their place of residence and expenses) should be congruent with their income. It would be strange if an entry-level employee earning a low salary lives in a mansion and owns luxury vehicles. Usually, incongruence in income versus lifestyle is used as an indicator of possible corrupt activities such as partaking in facilitation payments, theft, or income opportunities that present conflicts of interest. It is thus important to trace the source of income of such individuals.

Lifestyle audits completed by forensic experts can often reveal irregularities related to the employee's behaviour through exposing ethically dubious income streams. Lifestyle audits have, however, been questioned in terms of their infringement of privacy and whether they are justified from a protection of personal information context.

- • **Lie detector testing**

Lie detector tests are a popular component of pre-employment screening and forensic investigations. They measure and record biological or physiological indicators such as blood pressure, pulse, respiration and skin conductivity, while a person is asked and answering a series of questions.

The validity of this type of assessment is highly dependent on the training and skills set of the administrator. There are also a number of uncontrollable variables (e.g., room temperature and noise factors) that may influence the validity and reliability of these tests. Furthermore, the manner in which questions are asked also has an influence.

Only letting the good apples in: Integration

It has become evident from this overview that numerous methods of protecting the front door of the organisation are available. Each has advantages and disadvantages, but it is certain that using these methods correctly and in conjunction with each other greatly improves the effectiveness and validity of the selection process for the selection of 'good apples'. An overview of these methods is provided in the table below.

Selection method	Advantages	Disadvantages
Background and reference checking	1. Based on objective job-related criteria. 2. Good at evaluating the prior behaviour and experience of the employee. 3. Very effective at determining job-related competence.	1. Candidate can hide negative behaviour or experiences. 2. Important information is often not provided nor mentioned by references. 3. Must evaluate criteria beyond the references provided by the candidate to be optimally effective. 4. Time consuming and resource intensive.

Selection method	Advantages	Disadvantages
The job interview	1. Allows the organisation to get a 'feel' for the candidate behaviourally. 2. If properly structured can be very valid and reliable. 3. Can be used to pose ethical dilemmas to candidates. 4. Are very useful if certain behavioural indicators are evaluated by a panel of raters.	1. Not reliable or valid if used in an unstructured manner. 2. Suffer from social desirability bias. 3. Can benefit candidates with dark triad characteristics who look leaderlike. 4. Not a very good measure of integrity if used as the only selection measure (must be used in conjunction with other measures). 5. Falls victim to the personal biases of the interviewers.
Job simultion and assessment centres	1. Provide insight into how the candidate will deal with ethical challenges and dilemmas in the real world. 2. Highly valid and reliable if raters are well trained and exercises are valid measures of the behavioural indicators being rated. 3. Highly valid if based on a good job analysis. 4. Triangulates performance using various selection methodologies and exercises.	1. Do positively bias individuals with dark triad characteristics who look leaderlike. 2. Can result in low levels of interrater reliability if raters are not well trained. 3. Expensive and time consuming to implement. 4. Subjective biases of raters do affect results. 5. Heavily dependent on an accurate job analysis.

Selection method	Advantages	Disadvantages
Psychometric testing	1. Relatively cost effective. 2. Often standardised with demonstrable reliability and validity. 3. Measure integrity validly and reliably in a covert manner. 4. Administered by trained professionals. 5. Allows comparison of results across various audiences.	1. Can only be used by psychologists and psycho-metrists trained in the use of the instrument. 2. Overt integrity tests have poor reliability and validity. 3. Expertise is required to select the best psychometric meas-ure (many bad measures exist). 4. While cost effective, can still be expensive when large groups of people have to be tested.
Lifestyle audits	1. Can evaluate whether an employee is stealing from or receiving facilitation payments if done through a forensic evaluation. 2. May act as deterrent to corrupt activities.	1. May not always indicate unscrupulous behaviour or income. 2. Breaches the trust relationship with employees. 3. May have legal issues with privacy and access to per-sonal information.
Lie detector tests	1. Can indicate deception in candidates. 2. Improved validity and reliability if used by trained professionals. 3. Can be used as a deterrent to unethical behaviour.	1. Reliability and validity often influenced by expertise, or lack thereof, of the adminis-trator. 2. Produce many false negatives and false positives. 3. Not legally accepted and can create legal complications if challenged. 4. Can stigmatise the job candidate.

3.4 Training and development

The importance of ethics training

> The specific purpose of ethics training is to effect positive ethical behaviour change based on altered attitude.

This a myth that should be debunked. Of course, ethics can be 'taught', even if only to the extent that training interventions could be applied to effect: (1) attitude change through cognitive reasoning, awareness of the fact that ethics matters, the identification of potential ethical challenges and being cognisant of contextual ethical standards, and (2) the translation of changed attitude to behaviour. Ethical, or unethical behaviour for that matter is observable, audible and can be measured. This leads to the specific purpose of ethics training, which is to effect positive ethical behaviour change based on altered attitude. In this section, ethics training is described in terms of ethics competencies required, typical ethics training processes and content and audience-specific interventions.

An ethics competence

Besides cognisance of the importance of ethics for the organisation, employees at all levels require an ethics competence. It may also be expected of suppliers to be ethically competent.

An organisational *ethics competence* generally refers to the ability of people to have job-level appropriate and contextually relevant knowledge and skills to engage with, communicate about and apply organisational ethics in abstract and practical ways.

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Three types of ethics competence are identified (cf. Rossouw, 2002):

Cognitive competence: The intellectual knowledge and skills to make proper ethical analyses and judgements. *Sub-competencies* include:

- Awareness of ethical dimension
- Ethics vocabulary and theories
- Ethical reasoning
- Ethical decision-making
- Tolerance for ethical differences

Behavioural competence: An inclination and commitment to behave ethically. *Sub-competencies* include:

- Ethical sensitivity
- Ethical vision
- Ethical imagination
- Ethical courage
- Ethical virtues

Managerial competence: The ability to direct the ethics performance of organisations. *Sub-competencies* include:

- Ethical leadership
- The strategic importance of ethics
- Organisational ethics
- Managing ethics

Not all employees at all levels in the organisation, and who perform different specialised functions, necessarily require all three competencies in equal measures. The magnitude of competence required is determined by the nature of a person's direct or indirect engagement with ethics. A high-level competency map, which reflects the minimum magnitude of competencies necessary to contribute to the state of ethics of the organisation and its stakeholders, is presented below.

Applicability of Competence / Audience	Cognitive	Managerial	Behavioural
Leadership/management	High	High	High
Ethics practitioners	High	High	High
Employees	Medium	Low	High
Enabling partners	Medium	High	High
Suppliers	Medium	Low	High

The training process

A typical structured ethics training intervention could be aligned to the following process:

Step-by-step training intervention design and implementation

Determine training needs

↓

Secure training budget

↓

Decide on audience

↓

Select topic (broad, generic or specific)

↓

Determine scope and depth of intervention

↓

Determine time required for learning transfer

↓

Identify trainer or facilitator (internal or external to the organisation)

↓

Determine ideal delivery medium (in situ vs. virtual)

↓

Compile training programme

↓

Select appropriate learning aids (e.g. script, slides, videos, quizzes, discussions)

↓

Logistical and administrative training arrangements

↓

Deliver programme

↓

Assess learning transfer

↓

Evaluate impact of intervention

↓

Determine further training needs

Training format

The evolvement of ethical thinking is difficult to emulate in non-traditional training settings.

Interactive face-to-face ethics training characterised by cognitively challenging inter-action and dialogue is the first prize as an ethics training approach. The evolvement of ethical thinking is difficult to emulate in non-traditional training settings. In business contexts, the acquisition of ethical insight is largely dependent on the opportunities for enlightenment, persuasion, intensive dialogue and problem-solving posed by class-room-type training and discussion.

The pervasive COVID-19 pandemic has, however, undermined this ideal. In a COVID-19 era and possibly beyond, organisations have to structure themselves differently, and their employees need to adapt to new ways of working and learning. This has implications for training programme design and delivery, as paradigm shifts are required to continue ensuring optimal attitude change and skills transfer through virtual endeavours.

A decision on matching the ethics training format to the intended target audience is dependent on, among others: (1) specific groups' preferred learning styles and training delivery method preferences, (2) the number of trainees, (3) the training budget, (4) the geographic location of the audience, (5) the availability of skilled trainers, and (6) work location and travel restrictions.

Typical formal training interventions for groups:

- In-situ training workshops (ideal group size: 20 maximum)
- Virtual training workshops (ideal group size: maximum 50 delegates)
- E-learning via credible learning management system (LMS) platforms (unlimited number of trainees)

Typical informal training interventions:

- Mentoring
- Coaching (includes on-the-job induction of new employees)
- Group discussions
- Employee engagement forums
- Reflections on ethics in meetings

Suggested training delivery methods and aids:

The selection of training delivery methods and aids depends on the types of competencies (cognitive, behavioural, managerial) desired as training outcomes, the preferred learning style of the target audience, and the training content. Any of the following methods could be utilised singly or in combination:

- Ethics theory
- Case studies and scenario exercises (generic or organisation-specific)
- Group discussions of issues and dilemmas
- Industrial theatre
- Ethics risk identification exercises
- Quizzes
- Videos
- Role plays
- Diaries and journals
- Storytelling
- Practitioners' perspectives
- Reflections on ethical role models
- Research
- Design of intervention plans
- Drafting terms of reference documents
- Podcasts
- Interviews with experts
- Practical portfolios of evidence

There are also various formal ethics training courses offered by external service providers, should specialised and in-depth ethics training be desired. It is, however, important that such programmes are credible and offered by legitimate institutions. Courses available could be designed for degree or non-degree purposes, and could also result in accreditation or certification.

Training target audiences and training content

The content of formal and informal ethics training initiatives may be categorised as generic (what everyone should know) and specialised (what is unique to what different stakeholders should know).

• Leadership and employees

Leadership, which includes the organisation's governing body and its substructures, and management at all levels require a form of ethical leadership training. However, each of these structures and levels of management also require context-specific ethics insight and acumen to anticipate and cope with ethics challenges which may be organisation- or context-specific. Ethics training foci that could be useful for different members of an organisation are set out in the table below.

Target audience	Typical ethics training content
Governing body (Board/council members)	• Ethics overview • Application of the governance principle: The governing body should lead ethically and effectively (ethical leadership) • Governance of ethics
Ethics Committee (e.g. Social and Ethics Committee)	• Ethics overview • Application of the principle: The governing body should lead ethically and effectively (ethical leadership) • Governance of ethics • Corporate citizenship
Executive leadership and ethics champion	• Ethics overview and vocabulary • The case for ethics • Ethical leadership • Governance of ethics
Management	• Ethics overview and vocabulary • The case for ethics • Ethical leadership • Ethics management
Employees	• What is ethics? • Why ethics? • My role in ethics

Employee induction (also referred to as employee orientation or on-boarding) is offered by most organisations. Such programmes are offered to ensure that newcomers are adequately informed on company or job-specific expectations and practices. Some organisations opt to familiarise new employees on the organisation's values, while others go one step further and include some form of ethics awareness training in their induction programmes.

Including ethics in on-boarding offerings is crucial for ensuring that employees are clearly informed on ethical standards from day one of their employment. Various aspects such as values, codes of ethics and conduct, ethics-related policies, ethics advice facilities and safe reporting procedures could be included in formal induction

programmes. It should be obvious that, for example, a rushed one-hour session will not suffice for proper formal ethics orientation.

Furthermore, initial ethics awareness does not end on completion of formal induction programmes. It is imperative that line managers subsequently further orientate new-comers on ethics and particularly on job-specific ethical practices.

The reason for introducing ethics to employees as early as possible in their employment period is clear: every member of the organisation, from members of the governing body to entry-level employees should know from the outset exactly what the organisation's stance on ethics is. This goes a long way to prevent ethics transgressors from using the words, "But I didn't know …" when they are brought to book for having erred ethically.

- ## Other internal target audiences

It is crucial for those functions who collaborate closely with the ethics office(r) to also acquire a generic ethics competence. Enabling partners require some cognitive (thinking ethically) and a substantial portion of behavioural ethics competence (acting ethically at all times and being willing and able to talk about ethics matters). Importantly, they require in-depth knowledge of the organisational ethics management framework and the implementation thereof. They have to know exactly where their activities fit into the broader framework and what their ethics management roles and responsibilities are.

- ## Supplier training

There is increasing pressure on large organisations to ensure that their suppliers are ethically aware regarding issues such as anti-corruption, labour, and environmental and human rights practices. Some organisations conduct their own ethics training pro-grammes for suppliers. Others go as far as paying the training costs of their suppliers to be trained on ethics by external training service providers.

An example of externally presented ethics training for suppliers is the EASI e-learning programme offered by The Ethics Institute. EASI is an abbreviation for "Ethically Aware Supplier Induction", and suppliers are accredited as being 'ethically aware' on completion.

The EASI Programme

The purpose of EASI is to provide an introduction to make participants aware of the material ethical issues for their own organisations. Topics covered in EASI include:

- *Doing business with integrity*
  - Building blocks of a trusted business
  - Conflicts of interest
  - Corruption
  - Anti-corruption legislation
  - Bribes and facilitation payments
  - Nepotism and cronyism
  - Gifts
  - Anti-competitive behaviour
  - Fraud
- *Treating employees fairly*
- *Impact on society*
- *Environmental impact*

3.5 Performance and recognition

Organisations that follow a rules-based zero tolerance approach to ethics are typically intent on 'catching those who do wrong', and then exposing and punishing them. The rest of the employees are expected to subsequently take a leaf out of that book … but is that a sustainable way of creating shared ethics mindsets in organisations? Of building enduring ethical cultures? Such a reactive approach could create fear-based environments – which in turn could stem creativity and put the organisation two steps back in its quest to establish an ethical culture. So, why not 'catch those who do right' for a change? Let us consider the example of Funky Burgers in the box below:

Funky Burgers waitron of the month

An employee who displayed exemplary ethical behaviour is given recognition in the form of a lapel badge and a certificate that could be hung on the wall which states: 'Ethical employee of the month'. Almost like 'Funky Burgers waitron of the month'.

Could this be effective? Could that employee perhaps bear the brunt of colleagues' malice and become the 'teacher's pet of the month'? Do all employees' monthly remunerations not require ethical behaviour by implication? Why should one person who was perhaps slightly more ethical than others be put on a pedestal?

The Funky Burgers management's hearts were clearly in the right place. The way in which they demonstrate it has challenges though.

What do organisations do to recognise, and perhaps even reward, good apples or those who did something excellent to protect the organisation's ethical reputation? In this section, a few practical suggestions as to how this could work are shared.

Before we do so however, since the interface between recognition and reward is somewhat blurred, a distinction between these two concepts is important. *Recognition* for ethical behaviour consists of positive feedback on ethical behaviour that employees displayed over and beyond the 'standard' job-related and interpersonal ethical behaviour required. *Reward* for ethical behaviour constitutes tangible reward bestowed in the form of monetary or non-monetary appreciation – typically for behaviour that saved money for the organisation or promoted its ethical reputation.

• Recognition

Lockheed Martin's annual award for ethical behaviour

In an employee training video of the USA-based company Lockheed Martin, it is reported that the CEO gives one award per year, and that reward is for ethical behaviour. Employees are nominated for this award by their peers. An independent panel annually judges the nominations and decides on a deserving recipient.

The Funky Burgers scenario described earlier is likely based on the thinking that those who do right in a significant way need and deserve to receive positive feedback of sorts. This assumption has merit in that the company shows its commitment to ethics by recognising those who share the commitment and act on it. Ethical behaviour is thus acknowledged and reinforced. The same goes for the annual CEO Award for Ethics conferred by the Lockheed Martin CEO.

Recognition of ethical behaviour is an important dimension of making ethics real. Proper feedback might ensure that such behaviour is repeated in future – not only by those who are recognised, but also by those who observe it.

> The easiest and most practical way to recognise ethical behaviour is by verbalising praise.

There are some provisos for the successful execution of initiatives for recognition:

- The organisation's leadership should endorse and promote it, and be visible throughout the process.
- It is desirable that employees are nominated by colleagues or by external stakeholders whom they interact with.
- Recognition processes need to be structured and repeated at regular intervals.
- Processes need to be perceived as authentic, transparent and unbiased.
- The idea should not be conveyed that awarded recipients are the only ethical people in the organisation, or are more ethical than others – it should be made clear that they have done something or a series of things that are ultimate manifestations of the organisation's ethical values and which saved or protected the organisation's resources and ethical reputation.
- Recognition could culminate in reward, but preferably in non-monetary form, e.g. an annual draw for monthly recipients to determine who might receive a fully-paid three-day weekend package at a resort at the end of the year.
- The easiest and most practical way to recognise ethical behaviour is by verbalising praise. The proverbial 'pat on the back', rather than formal recognition could go a long way in reinforcing ethically exemplary behaviour. Managers should be trained to identify ethical behaviours demonstrated by their employees and then decide on the appropriate feedback and the forum most applicable (e.g. during a meeting).

The feedback should then be given in a way that is authentic and reflects gratitude. All such actions should be recorded by the manager.

> I've learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel.
>
> Maya Angelou

• Reward

An interesting outcome of rewarding employees for regular job-related performance may be that they are indeed rewarded for ethics merely by doing their jobs properly. This can be explained as follows: Should ethical behaviour be explicitly included in employees' job descriptions, they will be evaluated for ethical behaviour during performance management as Lockheed Martin does. Ethics thus becomes either a stand-alone key performance area (KPA) or a significant dimension within another KPA. When appraisals are conducted with a view to determine any monetary rewards due to deserving performance overall, employees are actually being rewarded for ethical behaviour by implication.

Ethics: The Fabric of Business – a Case Study of Lockheed Martin: Rewarding Ethical Behaviour

It is recorded on the company's website that all Lockheed Martin employees have an evaluation of their adherence to the company's ethical principles included in their annual performance assessments. Performance assessments are a significant factor in determining multiple aspects of the employee experience, including employee compensation.

It is evident from the explanation provided above that ethical behaviour can thus be integrated within the performance management system and can be rewarded accordingly. Individual employees' ethical behaviour therefore does not necessarily need to be identified, isolated and shouted out from the treetops – it simply forms part of one's everyday job execution.

Some organisations give all employees a standard fixed 'score' for ethics, but then reduce the score relative to minor (e.g. foul language) or more serious ethics transgressions (e.g. misleading customers).

An example is the practice followed by one of South Africa's major commercial banks, whereby employees who recruit and manage corporate client accounts are eligible for annual bonuses, which can be quite substantial. A fixed percentage of the potential annual bonus is allocated to ethics. Should such 'portfolio' managers achieve 'sales targets' via ethically dubious means, the ethics component of their bonuses is docked accordingly.

A point to ponder

Organisations should, at all costs, avoid the practice of assessing employees' ethics performance by using identical generic, blanket or vague ethics dimensions for all jobs in the organisation.

As an example: An organisation deems its ethical values (e.g. integrity, honesty, respect) sufficiently important to measure as part of employees' performance appraisal. This implies that everyone in the organisation is measured on their performance on the same ethical value. So, how is it then decided that Vusi scores 8/10 for 'integrity' and Susan 7/10?

Firstly, it is virtually impossible to identify generic measurable performance indicators for 'integrity'. Secondly, how are scores on 'integrity' then objectively allocated? Thirdly, what is the difference between Vusi's 8/10 and Susan's 7/10?

A seemingly minor difference in score may imply that Vusi receives a performance bonus that may exceed that which Susan receives by a substantial amount. In fact, all their peers would probably tell you that their 'integrity' is of equal (high) standard anyway.

Rewarding employees for 'ethics' performance subjectively is risky. Should ethics be a stand-alone KPA. the criteria for measurement should be clear and tangible. The point to ponder above cannot work, unless of course one can really measure dimensions as vague as 'integrity' or 'respect'. This can only be achieved if tangible, realistic and measurable behaviours that constitute integrity or ethics are predetermined and objectively assessed. How can this be realistically achieved? A possible solution to this challenge is the use of *Behaviourally Anchored Rating Scales (BARS).*

BARS uses behaviour statements as anchors rather than generic performance descriptors as are commonly found on traditional graphic rating scales. The eight steps of the BARS process are:

Step 1: Properly describe the umbrella dimension to be assessed, e.g. honesty.

Step 2: Analyse the job description to extract ethics-related activities by interviewing job incumbents and their managers, for example.

Step 3: List all observable and measurable job-related behaviours that would reflect an abundance of honesty – do this for all job families, i.e. jobs that are fairly similar in nature.

Step 4: List all observable and measurable job-related behaviours that would reflect an undesirable 'amount' of honesty – do this for all job families, i.e. jobs that are fairly similar in nature.

Step 5: Decide on a rating scale, e.g. 1 – 6 and provide a description for each of the six scores.

Step 6: Decide who to allocate as assessors for each employee (this could be one of or a combination of managers, peers, clients or other persons the appraisee frequently interacts with).

Step 7: Train assessors comprehensively on understanding:
- The nature and purpose of appraisal,
- The process to be followed,
- How to avoid the pitfalls in performance appraisal,
- How to conduct performance appraisal interviews with a specific focus on ethics,
- How to observe, record and score behaviours, and
- How to provide feedback to employees.

Step 8: Decide on the frequency of the application of the process (preferably quarterly, though half-yearly is likely to be more realistic) and implement the system.

Employees could also conduct self-ratings. Employees receive their own individual behaviourally anchored rating scales, each with behaviours relevant to their position. Their ratings could then be used as a basis for the performance review interview and be compared to their assessors' ratings.

> Rather than having universal performance indicators each position will have different behaviours.

Ratings are given for each behaviour of each employee. Rather than having universal performance indicators such as *'be honest'*, each position will have different behaviours. So, a salesperson in a store may have *'always tell customers the truth'*, while someone who stocks the shelves may have *'pack products that are closer to the expiry date at the front of shelves'* as a behaviour.

With all the aforementioned in mind, BARS are clearly cumbersome to design and apply. However, once the job descriptions and behaviours as explained in steps 2, 3 and 4 above have been identified, the content of most job families' BARS will remain relatively stable, and do not have to be altered often.

Prior to taking the step towards assessing ethics in performance, organisations need to understand that whatever process is selected, implementation is not a simple affair. The intensity of the need to assess ethical behaviour will determine whether the organisation is prepared to spend resources on such a project.

3.6 Ethics advice

Codes of ethics, no matter how well researched and written, cannot provide guidelines for dealing with every possible ethics issue that employees might be confronted with on a daily basis. Aspirational or values-based codes do not provide specific guidelines, and, while rules-based codes are more specific, they also cannot cover all eventualities. So how can organisations ensure that their employees do the right thing when faced with an ethics challenge for which they cannot find a guideline?

> Ideally, line managers should be able to provide ethics-related advice and guidance to employees.

Ideally, line managers should be able to provide ethics-related advice and guidance to employees. However, line managers are often ill-equipped to do so because they have not had sufficient training in ethical decision-making or ethics awareness. They might also be the very reason for the ethics issue on which an employee is seeking

advice. In addition, not all employees have the courage to challenge each other or their managers about unethical behaviour. It is thus necessary that organisations provide an internal safety net that bypasses hierarchical channels for confronting others in this regard. Such a safety net is usually provided in the form of an ethics helpline or ethics helpdesk (Rossouw & van Vuuren, 2017).

In addition to being a safety net, an ethics helpline can also be used to assist employees with the interpretation of codes and policies, guide them in addressing ethical dilemmas or challenges, and answer their ethics queries. It serves as a nodal point where ethics-related comments, dilemmas and advice are received and dealt with by the person most suitable to do so.

A helpline or helpdesk facility typically consists of an email address, telephone number or a website that are operated by trained ethics advisers in the ethics office. Employees can contact the facility anonymously if they so prefer, and information is handled in a confidential manner to protect the identity of employees who seek advice.

> ## The presence of an ethics helpline raises ethics awareness in organisations.

According to Rossouw and van Vuuren (2017), the presence of an ethics helpline also raises ethics awareness in organisations. Important to note is that receiving many calls through the ethics helpline is not necessarily indicative of ethical misconduct being rife, as it could rather signal that employees are thinking and talking about ethics and do not hesitate to ask questions about it. On the other hand, it could also be an indication that the code and ethics-related policies are unclear or ambiguous. It is therefore important to take note of enquiries by logging queries and comments in an information management system. This will enable the ethics office(r) to identify gaps in ethics-related policies, as well as trends that could inform awareness and communication campaigns. For example, if many people ask numerous questions about the Gifts and Hospitality Policy, the ethics office(r) should consider redrafting the policy to include clear guidelines that prevent misinterpretation. These trends should also be included in reports to the relevant ethics committees (see Part 5 of this handbook).

Many organisations seemingly find it difficult to distinguish between ethics helplines and ethics hotlines or safe reporting facilities. While there are similarities between ethics

helplines and ethics hotlines, there are important differences. The table below depicts the similarities and differences.

Ethics Helpline	Ethics Hotline
Confidential and anonymous	Confidential and anonymous
Email, web-based, telephone, WhatsApp	Email, web-based, telephone, WhatsApp
Data logged in an information management system	Data logged in a whistleblowing management system
Managed internally by the Ethics Office	Managed externally by an independent whistleblowing hotline service provider
Used to raise queries	Used to report unethical conduct
Aimed at providing advice and guidance in respect of queries	Aimed at investigation of reported unethical conduct

Ethics helplines and ethics hotlines (safe reporting facilities) serve different purposes that should not be confused with each other. Ethics hotlines are discussed in more detail in Part 4.

3.7 Promoting ethics in the supply chain

While an organisation is in the process of building an ethical culture, there is also a need to extend that culture to its supply chain.

Firstly, suppliers interact with employees, and one needs to ensure that they do so in line with the organisation's ethical standards. This is especially important in supply chains where there is a high risk of corruption and collusion between staff and suppliers. Secondly, suppliers might be linked reputationally to an organisation – many organisations have been embarrassed by the unethical behaviour of their suppliers, especially where large parts of their operations are outsourced. For instance, clothing labels which have had to face the repercussions of child labour among their manufacturing suppliers, and mining companies whose subcontractors have been responsible for

environmental damage. The media does not care if it was the organisation or supplier that displayed unacceptable behaviour. If it is linked to the brand, the organisation is deemed responsible.

Some international anti-corruption laws acknowledge the principle that 'You can't subcontract your immorality'. Many corrupt transactions are committed through third parties and intermediaries, and these laws have been written to ensure that both an organisation and its intermediaries, suppliers and agents can be held accountable.

It has become increasingly important for organisations to choose who to do business with. To ensure that they engage legitimate and reputable suppliers, many organisations conduct due diligence, not only of their suppliers, but also their clients.

Furthermore, organisations need to ensure that their suppliers are aware of the ethical standards that they should be adhering to by developing specific supplier codes of ethics. Such a code should deal with the most material ethical requirements for suppliers, again using a risk-based approach. This code should be proactively communicated to suppliers, and may even form part of supplier contracts.

Organisations also take proactive measures to ensure that their suppliers share their values by engaging them in training initiatives. These are especially useful for small and medium enterprises (SMEs), which may not have expensive governance systems in place. For more on ethics training for suppliers, see section 3.4 above.

3.8 Implementation of policies

King IV recommends that organisations should have a code of ethics and ethics policies as part of their ethics management programmes. The purpose of a code of ethics and ethics policies is to articulate the organisation's stance on ethical conduct.

KING IV

5. The governing body should approve codes of conduct and ethics policies that articulate and give effect to its direction on organisational ethics.

6. The governing body should ensure that codes of conduct and ethics poli-
    cies:
    (a) encompass the organisation's interaction with both internal and exter-
         nal stakeholders and the broader society; and
    (b) address the key ethics risks of the organisation.

7. The governing body should ensure that the codes of conduct and ethics
    policies provide for arrangements that familiarise employees and other
    stakeholders with the organisation's ethical standards. These arrange-
    ments should include:
    (a) publishing the organisation's codes of conduct and policies on the
         organisation's website, or on other platforms, or through other media
         as is appropriate;
    (b) the incorporation by reference, or otherwise, of the relevant codes of
         conduct and ethics policies in supplier and employee contracts; and
    (c) including the codes of conduct and ethics policies in employee induc-
         tion and training programmes.

8. The governing body should delegate to management the responsibility for
    implementation and execution of the codes of conduct and ethics policies.

King IV Guidance on Codes and Policies (IoDSA, 2016: 44)

The content of codes of ethics and ethics-related policies are informed by the ethics risks and challenges organisations face. By ensuring that these aspects are sufficiently accounted for in their existing codes of ethics and ethics-related policies, organisations will not only mitigate and address ethics risks and challenges, but will also prevent continuous revision of these documents and the formulation of new policies.

It is important to distinguish between codes of ethics, codes of conduct and ethics-related policies as they are often referred to interchangeably. However, they play different roles in an organisation.

Codes of ethics, within the context of organisations, refer to the ethical principles or standards that an organisation adopts and abides by in its decisions and interactions with its internal and external stakeholders. It is an aspirational values-based document that sets the organisation's ethics standards.

Codes of conduct, on the other hand, provide the rules for acceptable and unacceptable behaviour in the organisation. They typically contain sanctions or consequences for breaching these behavioural standards, have punitive powers and are often tabled during a disciplinary hearing. (For more detailed information on codes of ethics and codes of conduct, please consult the *Codes of Ethics Handbook* by Rossouw and Van Vuuren, 2020.)

Codes of ethics and codes of conduct are supported by, and elaborated on, in ethics policies. These policies anticipate the areas in which employees could experience ethical dilemmas or areas in which ethical breaches are likely to occur. The organisation therefore pre-empts this, and through policy sets out the expected standard as well as the processes and procedures that should be followed to provide structure and avoid confusion. Key ethics policies typically include conflicts of interest, protected disclosures or whistleblowing, gifts and hospitality, and anti-corruption.

Other supportive ethics-related policies could include recruitment of employees, employee promotion, employee remuneration, procurement, internal investigations, anti-sexual harassment and anti-bullying.

These codes and policies are key instruments that form part of an organisation's ethics management journey. However, merely having the code of ethics and ethics-related policies will not ensure their intended impact. They first need to be institutionalised and implemented before they will have their desired effect.

Making the code of ethics and ethics-related policies real is to a large extent dependent on the quality of the code and how its content and intended purpose and usefulness is communicated in the organisation. Institutionalisation of policies has two key elements to it:

1. Those who need to implement these documents (such as line managers) need to understand the purpose and spirit of the code and policies, what it means, and what they need to do to implement it. It is also key as part of institutionalisation that managers and supervisors understand the importance of *consistency* in the application of the code and policies.

2. Employees need a clear shared meaning of the code and policies, see the benefit thereof, and understand the importance of upholding and abiding by the code and policies as part of building the ethical culture in the organisation.

Policies are institutionalised through a range of mechanisms including training, awareness raising and communication campaigns. As part of the institutionalisation process it is also important to ensure that employees know where to find the policies. The most updated versions can be stored on a platform easily accessible to all employees, such as shared folders, or on the webpage of the ethics office. Employees must be made aware of this and know how to access these policies.

It is considered good practice for organisations to assess the effectiveness of implementation by monitoring adherence to the provisions of the code and policies, as well as to track and keep record of the efforts to institutionalise this so that it can be included in the monitoring and reporting process.

3.9 Ethics management information systems

An ethics management information system (EMIS) is an intra-organisational electronic system that serves as the backbone of an organisation's ethics management related operations. The EMIS could even take the form of a sub-website that complements the main organisational website.

Important to note here is that it is not always due to a lack of will or interest that managers are perhaps not good at managing ethics in the workplace. They might merely require more practical information about it. It is extremely useful to have an electronic system linked to the organisation's intranet that: (1) provides access to ethics-related information, and (2) allows information to be uploaded or added to the system.

> An ethics management information system is an imperative, particularly for larger organisations.

Irrespective of the scope and depth of the organisation's ethics interventions, information on what was done, and how things should be done, should be available to managers and employees. As such, an ethics management information system is an imperative, particularly for larger organisations.

Features of an EMIS

Any EMIS should be user-friendly and interactive, and two-way functionality is also required. While there will always be a static component that will remain relatively unchanged over a year or two, dynamic functionality is, however, also required to allow for the uploading of documents, providing information and adding appropriate data.

Although the word 'management' forms part of the EMIS abbreviation, management in this case refers to the process of ethics management and not to the users of the system. Therefore, it is not aimed at employees in managerial positions only.

The EMIS should be accessible to any manager at any level and to all employees. The decision of who to allow access to specific sub-portals, however, lies with the organisation's executive (e.g. the Chief Information or Technology Officer), the ethics champion and the ethics management function. Access to specific portals and their information, and the facility to add information to the system's database, should thus be allocated selectively. Deciding on who will have access will be based on the following criteria:

- The relevance of the content for the intended user,
- The level of confidentiality of the content, and
- The capacity and functionalities of the system.

A disadvantage of an EMIS is that only those employees who have internet access can log into the system. In a labour-intensive organisation, access could be provided for representatives of employee groups, ethics ambassadors or the convenors of employee engagement forums or 'town hall sessions'.

Two-way communication regarding what *external stakeholders* should know about the organisation's ethics standards and processes is a crucial contributor to the evolution of an ethical culture. External stakeholders could thus be allowed limited access to the system. There could, for example, be portals accessible to suppliers, contractors and customers.

Ethics Apps and Mobile Devices

There is an ever-growing number of companies that design organisational ethics applications for mobile phones. Ethics applications are useful in that they provide employees virtually unlimited access to ethics-related two-way communication with their employers and ethics office(r)s.

Dimensions of an EMIS

Any EMIS should obviously have a generic 'landing' page that explains the purpose and contents of the system and contains a site map for access to specific sub-portals. Typical information dimensions to be covered in the sub-portals are listed in the table below.

Possible EMIS portals

Information type	Examples of static information (info out)	Examples of dynamic information (info in)
General communication	• Description of ethics commitments • The importance of ethics • Overview and progress of ethics programme • Statistics and trends	• Comments welcome
Codes of ethics or conduct, policies and procedures	• A list of 'Read only' documents	• Comments welcome
Ethics risk management	• Ethics risk register	• Ideas for improvement
Ethics advice	• Purpose and description of process	• Pose questions (anonymity optional)
Making ethical decisions	• The purpose of decision-making • Areas of application • Cases (generic and company-specific) • Guidelines or checklists for making good decisions	• Feedback on challenges, dilemmas and issues • Lessons learnt • Upload case studies
Ethics training	• Range of training programmes • Attendance registers and statistics • Trainee achievements • On-line training sub-portal to LMS	• Feedback on specific programmes

Information type	Examples of static information (info out)	Examples of dynamic information (info in)
Recognition and reward	• Description of ethical behaviour recognition scheme • List of accolades given	• Suggestions for accolades • Nominate recipients for recognition and reward
Conflicts of interest	• Description • The importance of conflicts • Process for declaring conflicts • Guidelines/checklists for identifying conflicts • Declaration of conflicts register	• Upload applications • Communication of decisions
Gifts and entertainment	• Recipients of organisational gifts and the value thereof • Entertainment sponsored or received by the organisation as a whole or by teams and individuals	• Gift/entertainment declarations • Gift registers
Corporate social responsibility or investment programmes	• Description • Target audience • Costs	• Ideas for allocation • Feedback on success
Sponsorships and donations	• Recipients and values of organisational sponsorships, and donations given or received	• Comments on current schemes and sugestions for future outreach
Supplier interface	• Supplier code of conduct • Ethical due diligence required • Ethical requirements in quotation, tender or bidding processes	• Comments

Information type	Examples of static information (info out)	Examples of dynamic information (info in)
Treating customers fairly	• Customer's/client's rights and obligations	• Feedback facility
Disciplinary issues and investigations	• Legislation, rights and policies • Disciplinary procedures and processes • Grievance procedures and processes • Statistics on outcomes of processes • Limited feedback on forensics	• Comments of fairness of processes • Lodging of grievances
Transgressors' database	• Stance on privacy and rights of perpetrators and the organisation • Lists of red-listed suppliers and dismissed employees	• Suggestions
Safe reporting (whistleblowing)	• Reason and nature • Protection of whistleblowers • Whistleblowing process • Progress on reports received	• Reporting sub-portal

Managing the EMIS

The design, management and maintenance of an EMIS requires a team effort whether the process is conducted within the organisation or outsourced to an external service provider. Typical contributors to a design team could be the ethics office(r) and its enabling partners, the organisation's ethics champion, the ethics management committee and information technology specialists. Even if the design was outsourced, the management and maintenance of the EMIS should be a joint effort between at the least the ethics office, HR and IT divisions of the organisation.

4.1 Reactive interventions: an overview

Whilst the main thrust of proactive interventions is that they consist of efforts to remind people of their ethical obligations, the gist of reactive interventions is that they happen after the fact, i.e., they become relevant once ethically undesirable behaviour has come to light. It cannot be denied that bad things will happen, even in the best of organisations. A discussion of the reasons why bad things happen in organisations is beyond the scope of this handbook. Suffice to say that the presence of bad apples who could contaminate others is a fact of life.

> Organisations cannot function in a rule-less environment.

In a way, reactive interventions represent the dark side of ethics management. They are negative in nature in that they are based on compliance and adherence to rules, i.e., extrinsically enforced. Organisations cannot function in a rule-less environment, and particularly not when they operate in societies marked by a high prevalence of unethical conduct. Unethical external or internal environments present risks to organisations that need to be anticipated, and subsequently addressed firmly. Reactive interventions are thus unavoidable, despite having the potential to slow down the optimal development of ethical cultures.

In the following section, a range of typical interventions designed to respond to ethics transgressions, and prevent further occurrence, is presented.

4.2 Safe reporting

While many organisations expect line managers and the ethics helpline to be the first access points for addressing ethical issues, they cannot always address all such issues adequately. There are often serious or complicated issues that require in-depth attention and analysis. Certain ethical issues can have dire consequences for an organisation should they become public. It is certainly preferable that organisations become aware of such issues and address them before reading about it in the media. It is therefore beneficial for organisations to provide alternative facilities where stakeholders can report unethical behaviour safely, anonymously and confidentially. These facilities or reporting lines are known by different naming conventions such as safe reporting lines,

whistleblowing hotlines, 'speak out' or 'speak up' facilities or ethics lines – to name a few. For the purposes of this handbook, the term *whistleblowing lines* will be used.

Whistleblowing has several definitions, but the main objective of whistleblowing is to make unethical behaviour known to someone who the whistleblower believes will take action.

Whistleblowing: A formal definition

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 (Groenewald, 2020: 4).

Some organisations prefer to have internal whistleblowing lines, while others opt to outsource such facilities to external, independent companies that specialise in providing such services. The use of the latter increases the likelihood of people reporting anonymously, thereby limiting the possibility of being victimised.

Organisations' whistleblowing facilities serve many purposes, such as providing:

- A communications channel beyond the rumour mill,
- An early warning of issues or problem areas brewing in the organisation, and
- A last internal stop for whistleblowers before they take an issue outside the organisation to a regulator, attorney or the media.

Whistleblowing facilities encompass not only an internal or external safe reporting line. For these facilities to be effective, organisations should create a whistleblowing ecosystem that consists of interrelated elements of establishing policies and procedures to address whistleblowing effectively.

An effective whistleblowing ecosystem rests on four pillars of a responsive whistleblowing environment (ISO 37002: 2021), namely:

1. Receiving reports,
2. Assessing reports,
3. Investigating reports, and
4. Concluding cases.

Such a system is imperative to building trust in the organisation and its commitment to ethical practices. It demonstrates leadership commitment to preventing and addressing wrongdoing, and encourages people to report wrongdoing in a timely manner, reduces and prevents victimisation of whistleblowers and other involved parties, encourages a culture of transparency and accountability, and 'makes it okay' for people to blow the whistle (Groenewald, 2020).

Each of the pillars of an effective whistleblowing ecosystem are described below.

• Receiving reports

Research conducted by The Ethics Institute (Groenewald & Vorster, 2019) found that employees prefer to use multiple channels to report unethical behaviour, e.g., direct line managers, human resources, risk management, the ethics officer, internal audit and an independent whistleblowing facility.

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)

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.

For these multiple channels to be effective, organisations must ensure that:

- These channels are known to, and understood by, all employees;
- These channels are stipulated and explained in a whistleblowing policy;
- Reports received through these channels are centralised at one function such as the ethics office; and
- Reports are captured in a centrally administrated whistleblowing management system.

The first pillar of an effective whistleblowing ecosystem is awareness creation about the existence of the different reporting channels, and that recipients of whistleblowing reports disseminate these reports to the function responsible for the centralised whistleblowing management system. All too often reports 'get lost' because the recipients were unsure how to deal with it, or whistleblowers lose confidence that their reports will ever be investigated because they receive no feedback about what has been done. A centralised whistleblowing management system will prevent such occurrences by ensuring that: (1) all reports received in the organisation are logged in a central database, (2) are disseminated to appropriate people for investigation, (3) are followed up to promote timeous closure of investigations, and (4) feedback is provided to whistleblowers about the outcome of investigations into their reports.
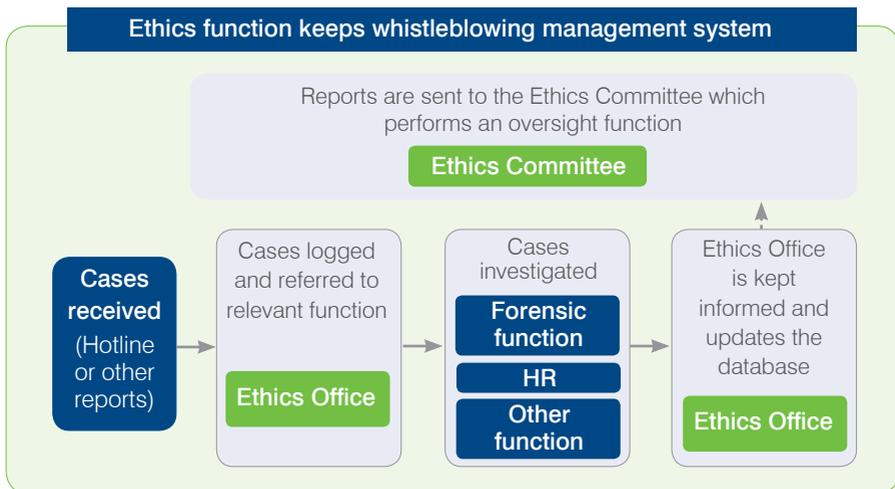
The Protected Disclosures Act as amended, Act 5 of 2017, requires that organisations acknowledge receipt of whistleblower reports within 21 days and inform the reporter of the intended actions that the organisation will embark on. The Act also requires that feedback be provided on closure of investigations.

The ethics office should act as host of the whistleblowing management system.

An often-asked question is who should host or administer the whistleblowing management system. 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's ethics committee that performs an oversight function. Therefore, it is increasingly evident that the ethics office should act as host of the whistleblowing management system.

The host of this system receives whistleblowing reports, assesses and disseminates the reports to the appropriate person or function for investigation, and on receipt of feedback from the latter, closes the report.

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**

(Source: Kris Dobie, The Ethics Institute)

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 then forwards the report to the appropriate investigation function who provides feedback to the forensic function on closure of the investigation. In this case, the forensic function has to allow the ethics office to access the whistleblowing management system for the purpose of drafting whistleblowing management reports for submission to the mentioned ethics committees.

Below is an example of the whistleblowing management system located in the forensic function.
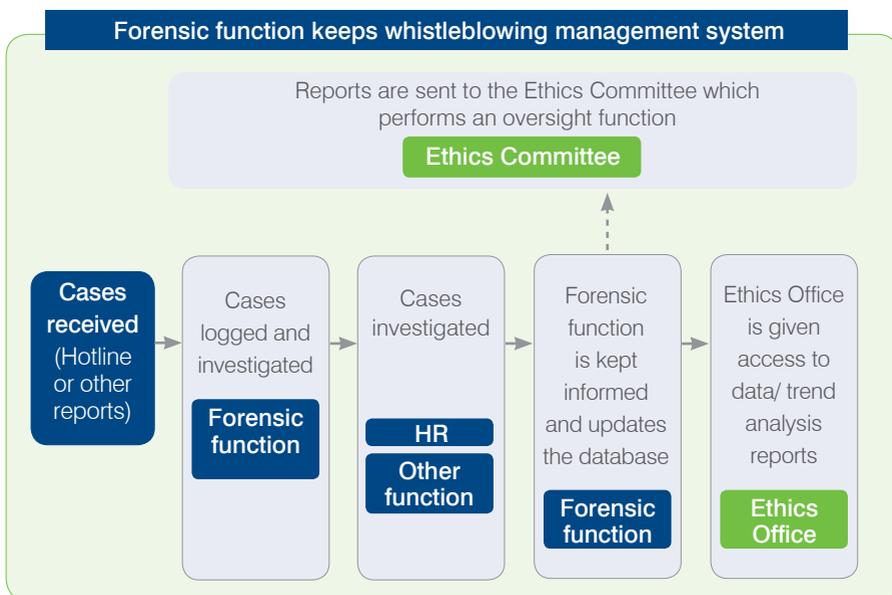
(Source: Kris Dobie, The Ethics Institute)

Ultimately, the planning of the whistleblowing management system is a collaborative process that requires input from different functional areas such as HR, forensic investigations, security and risk management. The systems should be planned in such a manner that different organisational functions can retrieve data as required.

Below is an example of a basic whistleblowing management system.

Report reference no	Date received	Incident category	Location of allegation	Date of aknowledgement 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 investiga- tions	06/06/20	08/06/20
Report 003	25/04/20	Misuse and misappropria- tion 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

After receipt of whistleblowing reports, the host of the whistleblowing management system assesses the reports to determine the way forward with the reported case.

• **Assessing reports**

The process for assessing reports of unethical behaviour should be documented and based on the principle of objectivity. The purpose of the preliminary assessment is to determine the:

- • 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, and
- • Allocation of case.

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

Criteria for assessing whistleblowing reports

- 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? If so, was the allegation investigated sufficiently and correctly?
- Does the allegation involve senior employees?
- What is the nature of the misconduct?

On conclusion of the assessment, it might be required to engage with other functions such as HR, legal, compliance or internal audit. It might also require the gathering of more information, the institution of preliminary measures such as suspending the implicated person and securing evidence, referring the whistleblower to other appropriate procedures in the organisation such as grievance procedures, or referring the case to law enforcement agencies. The emphasis throughout these engagements must always be on protecting the confidentiality of the provided information, the identity of the whistleblower, and the objectivity of the investigation.

Only once the assessment has resulted in tangible and credible information that supports the allegation, can a full-scale investigation follow.

- **Investigating reports**

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

> Mismanaged investigations can have dire consequences for implicated persons, whistleblowers, careers, and reputations of involved parties.

Mismanaged investigations can have dire consequences for implicated persons, whistleblowers, careers, and reputations of involved parties. It is therefore imperative that investigations are conducted in a consistent manner, objectively and according to recognised investigation principles. The latter will be elaborated on in section 4.3. In this section we focus on the main reasons why employees do not report misconduct. Both relate to the investigation of whistleblower reports.

Groenewald and Vorster (2019) found that a belief that people will be victimised for reporting unethical behaviour is the main reason why they refrain from reporting such conduct. This is closely followed by a belief that the organisation will not act on their reports. Addressing these reasons is imperative for ensuring that organisations are informed of unethical behaviour in their midst. If organisations do not know about this kind of behaviour, they cannot do anything about it – which, in turn, implies that unethical behaviour could continue to the extent that the organisational culture is negatively affected. The consequence? Reading about the organisation in the media!

The belief about whistleblowers being victimised is, in many cases, a legitimate one. One has only to search known whistleblowers on the internet to read about their trauma and negative experiences in this regard.

These kinds of messages do not bode well for encouraging people to come forward with information about ethical ills in the organisation. It is therefore incumbent on the latter to ensure that whistleblowing reports are handled in a confidential manner, that the identity of the reporter, where known, is protected, and that appropriate entities or people investigate reported cases. It could happen that those involved in investigating

reports discuss it with people who do not need to know about the report. For example, it could happen that a manager who received a whistleblowing report in confidence from an employee (whose identity is obviously known to the manager) seeks advice on how to handle the report from a colleague. In the process, the manager reveals the content of the report, as well as the identity of the employee who reported the matter. The colleague, perhaps feeling threatened because the report contains allegations about unethical behaviour in their division, seeks out the whistleblower and starts victimising the latter.

> **Organisations have to commit to investigating all reports made in good faith.**

The second most cited reason for not reporting unethical behaviour is that employees do not believe the organisation will act on such reports. Organisations have to commit to investigating all reports made in good faith (in other words, non-malicious reports). Complying with the requirements of the Protected Disclosures Amendment Act (Act 5 of 2017) regarding acknowledging receipt of reports and providing feedback to reporters about the organisation's intended action, as well as providing feedback on closure of investigations, will go a long way in addressing the aforementioned belief. It must be remembered that whistleblowing entails that a person informs another person or entity about unethical conduct because the individual believes the other party will act on the report.

• Concluding cases

Investigations must be concluded in a prompt and appropriate manner (without sacrificing thoroughness) to encourage trust in the organisation's commitment to ethical conduct. The conclusion of a case signals the end of the enquiry into the whistleblowing report. The conclusion is reached when an allegation has been proven or disproven, where the findings are inconclusive and no further action is necessary, or when it was determined through fact-finding that the allegation does not warrant further investigation.

Concluding a whistleblowing case may involve several actions, such as:
- Issuing findings,
- Recommending the strengthening of controls, improving policies and procedures, implementing remedial actions or disciplinary processes, and
- Identifying lessons learnt through the investigation.

On conclusion of the investigation, the investigating party should provide feedback to the host of the whistleblowing management system, e.g. the ethics office, as well as to the whistleblower and other relevant stakeholders about the outcome(s) of the investigation.

A good workplace investigation will result in the identification of issues that carry the potential to disadvantage the organisation before they get out of control. And, should a whistleblower who is dissatisfied with the outcome of an investigation go to external parties with the same allegation, the organisation will be able to prove that they conducted a thorough investigation (if it had been thorough of course) and documented the findings. Having taken appropriate action, it will put the organisation in a better position to avoid or minimise liability.

In the next section we elaborate on the principles of investigations, and more specifically as to how they relate to ethics investigations. Forensic investigations usually reside outside the mandate of ethics officers, and as such are beyond the scope of this handbook.

> Investigations should follow a consistent approach in dealing with reports and outcomes, and must be fair, appropriate and respect the rights of those involved.

4.3. Ethics investigations

The purpose of an ethics investigation is to resolve ethical issues and to prevent the reoccurrence or escalation thereof. Investigations should follow a consistent approach in dealing with reports and outcomes, and must be fair, appropriate and respect the rights of those involved. Ultimately, investigations contribute to improving the ethical culture of an organisation.

As mentioned, this section deals with ethics investigations only, and not with forensic enquiries. The difference between these two types of investigations is clarified in the table below.

Forensic investigation	Ethics investigation
"The application of scientific knowledge and methodology to legal problems and criminal investigations" - Legal dictionary "A forensic investigation is the practice of lawfully establishing evidence and facts that are to be presented in a court of law" – free dictionary.com • Criminal matters such as fraud and corruption • Sanctions handed down by a court of law. Principle: Need to be proven beyond reasonable doubt.	The formal or systematic examination or research of transgressions of the ethical standards of an organisation. • Addresses transgressions of the values and ethical standards of an organisation (e.g. conflicts of interest and harassment) • Conclusions dealt with internally through disciplinary measures. Principle: On a balance of probabilities. Circumstantial evidence, or a logical deduction of relevant events, is acceptable.

Organisations should ensure that they identify, implement, communicate and maintain a process that ensures that ethics investigations are conducted impartially by qualified persons. For investigations to be effective, investigators, in addition to being au fait with investigation methodology, should have the following personal qualities:

- Impartial
- Analytical
- Emotional intelligence
- Perseverance
- Courage
- Flexible
- Trustworthy
- Active listening skills
- Critical thinking skills
- The ability to process information quickly and respond to new information that comes to light
- A thorough knowledge of the organisation's policies and procedures, particularly those regarding ethics.

Investigative steps

An effective ethics investigation is based on four basic steps, i.e., planning, establishing facts, evaluation of information, and drafting a report with the findings of the investigation and recommendations for action (if required). These steps are discussed below.

• **Planning**

The purpose of planning an investigation is to define the scope of the investigation, identify the parties involved, identify the policies that have possibly been transgressed, list activities and deadlines, assign responsibilities for different tasks, outline the risks to the investigation and provide a launching point for the investigator to begin the investigation.

To determine the scope of the investigation, investigators must understand exactly what they need to establish. It is therefore important that they understand the allegation and not become distracted by peripheral issues, which only serve to muddy the waters and increase the amount of time and effort spent on an investigation. Once the scope of the investigation has been determined, the applicable policies that have possibly been transgressed must be listed, as well as other relevant documentary information.

> **Example of documents to be consulted in cases of a conflict of interest**
>
> • Code of ethics
> • Conflict of interest policy
> • External work policy
> • Gifts and hospitality policy

Based on the allegation, the parties who could be involved, or who may be witnesses or could possibly have information that will assist the investigator, should be identified and recorded in the plan. At this stage the investigator should also decide on the order in which interviews will be conducted, the questions that need to be asked and the areas that need to be covered. However, before investigators conduct any interview, they should obtain all relevant documents which may inform the content of interview questions.

• Establishing facts

Next, the investigator embarks on a fact-finding mission and obtains all relevant information.

Depending on the nature of the allegation, documentary sources of information can include employee files, emails, text messages, files and documents extracted from hard drives, video files, public records such as directorship records at the Companies and Intellectual Property Commission, and social media posts of the implicated person (and, if the identity of the reporter is known, also of the reporter).

The next step in gathering information entails conducting interviews with relevant people, such as the whistleblower (if the identity is known), witnesses and colleagues, and the implicated party. Investigators need to be thoroughly trained in interviewing techniques to ensure that they obtain information that is optimal in terms of quality and quantity.

The use of face-to-face interviews is the only way to observe a person's whole range of reactions to questions (non-verbal behaviour and verbal clues). They can be particularly useful if:

- the subject matter is sensitive;
- the interviewee is the subject being investigated;
- one needs to assess the credibility of the witness;
- the interviewee is a vulnerable person (e.g., who was sexually harassed); or
- the case involves much documentary evidence that needs to be discussed with the interviewee.

Telephonic interviews should only be used to confirm simple facts, e.g., the date of a meeting or clarification of a statement.

• Evaluation of information

Build the puzzle to determine what picture emerges from the information.

The third step in the investigation process consists of the evaluation of information. This is the stage during which the investigator builds the puzzle to determine what picture emerges from the information. This entails the following:

- Considering the nature of the source(s), their trustworthiness, their motive, similar proven or unfounded allegations in the past;
- Considering possible scenarios, including innocent ones;
- Asking who, what, where, when, why, how;
- Confirming that information was independently substantiated by more than one source;
- Refraining from making assumptions;
- Discussing the gathered information only on a need-to-know basis with relevant people;
- Reviewing the information and evidence gathered in terms of comprehensiveness, quality and process, and identifying gaps;
- Using the information and evidence appropriately, e.g., it should be relevant to the specific case;
- Applying knowledge, functional insights, and experience to assess the validity and probability of issues;
- Reflecting on all discrepancies and disputed relevant matters and taking an appropriate view; and
- Applying judgment on whether there is sufficient information for an informed opinion and to make a well-motivated finding on every allegation (balance of probabilities) (The Labour Relations Act, Act 66 of 1995 states that it is sufficient to form an opinion based on balance of probabilities).

Investigators must always apply sound thinking and make impartial judgments on whether the alleged misconduct occurred. Only then can a conclusion on the findings regarding the matter at hand be reached.

• Reporting on findings

The process culminates with the drafting of a comprehensive report that includes recommendations for further action, if action is required.

A report should include an executive summary of the allegation(s), the nature of the investigation, the ethics transgressions that were investigated, summaries of interviews, the findings related to each allegation, and the outcome of the investigation. This assists senior decision-makers to acquire an overall picture of the case. The report ends with a conclusion and recommendations, such as in the box below.

Conclusion: Based on the interviews with the complainant and the alleged offender, I find that the complainant's allegation of sexual harassment is substantiated with mitigating circumstances.

Recommendation: It is my recommendation that the organisation provides the respondent with a written account of the findings of the investigation and a reminder of the company's expectations for employee behaviour. I also recommend that the respondent receives sexual harassment awareness training and be advised that repeated harassing behaviour may result in further discipline up to and including termination.

Safe reporting mechanisms carry no weight unless the organisation is seen to investigate reports of unethical conduct. It is therefore imperative that investigations commence as soon as possible upon receipt of reports, that a predetermined protocol is followed to ensure consistency and fairness in the results, that investigators have the necessary expertise to conduct investigations, and, where punitive sanctions are due, the punishment 'fits the crime'.

4.4 Discipline

The aim of a disciplinary procedure is to encourage and maintain the ethical standards of behaviour of the organisation, and ensure consistent and fair treatment for all. It also serves as a deterrent for unethical behaviour and communicates the organisation's commitment to an ethical culture.

Disciplinary procedures should be transparent and swift, yet consistent and decisive. These procedures should be based on the principles of fairness and objectivity to ensure unbiased hearings, verdicts and penalties.

The nature of disciplinary sanctions should be informed by:

- The risk, or perceived risk of harm to the organisation, and
- Internal and external stakeholders' expectations of the organisation in respect of the allegations.

The severity of the sanction will depend on the perceived risk, the actual damage caused and the willingness of the accused to take responsibility for their actions, thereby lessening the possibility of a re-offence. Where discipline and punitive sanctions are due, the punishment should 'fit the crime'.

Possible action as a result of an investigation

Written Reprimand	Censure	Respondent Action
No Action	Transfer	Suspension
	Termination	

It is crucial that organisations are consistent in applying punitive measures for similar offences. For example, if one employee receives punishment A for offence Aa, then another employee, who also committed offence Aa, should receive the same sanction (A). Position and power must not play a role in deciding what disciplinary measures will be taken against a guilty party.

4.5. An ethics fallout strategy

Many organisations suffer ethical failure followed by a sometimes devastating ethics fallout. This results in loss of investor confidence, leadership disarray, uncertainty and shame among employees, and customer distrust. The trust crisis that is triggered by ethics fallout carries the potential to not only set back an organisation seriously, but can also result in its demise. Are organisations ready to deal with failure swiftly and appropriately?

> To err is human …
> What matters:
> * The kind of errors we make
> * Our response to these errors
>
> Adv. Thuli Madonsela
> (BEN-Africa Conference 2017)

Typical reactions that do not help at all

Organisations tend to react to ethics fallout by adopting one of two natural threat responses: fight or freeze.

Organisations that fight tend to feign disbelief or react aggressively or defensively to allegations. There are usually sweeping denial statements and sometimes even threats of legal action against the 'rumour-mongers', be it the media or competitors. An attitude of 'let's ride out this storm, it will blow over' prevails.

Organisations that freeze show little reaction. Typical responses are 'no comment', 'we are investigating these allegations', 'the matter is sub judice', 'we are innocent until proven guilty', or 'we are seeking legal advice'. Such an ostrich mentality results in increased distrust among stakeholders and perceptions that matters will be swept under the carpet. These organisations also attempt to 'ride out the storm'.

Both fight and freeze reactions cause unnecessary delays and uncertainty at a time when it is crucial to regain lost trust as speedily as possible. The fact is that inertia to react casts even more suspicion and leaves organisations open to speculative

journalism and rumour-mongering. This is magnified to an extraordinary degree by social media, where a million uninformed voices are waiting and willing to draw unflattering conclusions based on scant information.

Ethics disaster management

Why do so many organisations not have ethics disaster management plans?

To comply with occupational health and safety regulations, most organisations have disaster management plans in place: if there is a fire, employees know which stairwell to head to; if there is a power failure, emergency lighting illuminates the exits. So, the question is: Why do so many organisations not have ethics disaster management plans? Especially as it appears that most organisations are far more prone to ethical failures than other disasters.

Disaster management plans contain very specific procedures, one of which is encouraging all employees to meet at a predetermined assembly point to regroup. However, there is no such 'assembly point' for organisations that experience ethical failure and resultant fallout.

An ethics contingency plan

It is crucial that organisations deal with, and are seen to be dealing with, ethical failure swiftly and assertively, by:

- Facilitating proper reactions to ethical failure that demonstrates accountability; and
- Taking a firm and reassuring leadership stance and action, as opposed to being defensive or silent.

All that is required is a pre-emptive plan in the form of a spreadsheet of actions on how different organisational leadership groups and other functions should respond when an ethics crisis occurs. An ethical fallout contingency plan should consist of predetermined approaches and actions, with the following steps:

- *Get to the truth:* All stops should be pulled to ensure identification and confirmation of the nature of the failure as soon as possible.

- *Self-disclosure:* Rather than being caught out by outsiders, organisations should transparently self-disclose failure once they have established the truth. This will probably earn them more respect than when they are denying, fighting or freezing.

- *Apologise:* Stakeholders can actually be quite forgiving should the organisation apologise for the failure – the apology has to be sincere and authentic though, rather than reluctant or forced.

- *Continuous communication:* This should commence as soon as failure has been exposed and continue until fixing or healing is well advanced. Blanket press releases are not sufficient to appease all stakeholders: there should be specific, predetermined approaches for all major stakeholders, as each will have different concerns and need to be approached via different channels. Senior leadership should make themselves available as often as possible to the media. This makes it even more important that company-generated communication on progress is truthful and frequent.

> Organisations that have experienced ethical failure are not trusted to mark their own homework.

- *Independent investigation:* For serious ethical lapses, external expertise must be commissioned. Internal investigations by the organisation's forensic or internal audit teams will never have adequate credibility. Organisations that have experienced ethical failure are not trusted to mark their own homework.

- *Consequence management:* Where possible, those seemingly responsible should be suspended until more information becomes available. Transgressors should be swiftly, fairly, firmly and transparently brought to book. This is crucial to prevent perceptions that things are being swept under the carpet.

- *Restitution:* Should the ethical failure have resulted in one or more stakeholders being financially disadvantaged, restitution should be seriously considered.

- *Preventing reoccurrence:* Organisations should be able to demonstrate that they have taken corrective measures that will prevent reoccurrence of the incidents that caused the ethics fallout.

While it may seem highly pessimistic and cynical to have such a plan, ethics fallout is more common that physical disasters. Organisations therefore need to be prepared for this.

4.6 Transgressors' databases

Organisations have a right to protect themselves and sometimes even other organisations against bad apples, particularly against those who have or could in future damage the organisation through unethical behaviour. The names of perpetrators and sometimes summaries of the nature of their transgressions can be recorded and overtly or covertly published internally or even external to the organisation. However, the legality and ethical justification of this type of action is often questioned. For the purpose of this handbook, three types of persons or entities' unethical behaviour that should be accounted for are identified, namely: directors, employees and suppliers.

Director delinquency

Golegal (2021) suggests that it is important for the law to prohibit certain persons from being appointed as directors, especially if they have a history of performing the duties of a director in a reckless or grossly negligent manner. South African legislation (the Companies Act 71 of 2008) defines and allows action against directors who transgress – this includes ethical transgression. Du Plessis and Delport (2017) state that: "There is no doubt that the South African provisions regarding disqualification are unique. Not only for the terminology used like 'delinquency' and 'probation' linked to the disqualification of directors, but also as far as the procedures stipulated for the application for delinquency and probation orders are concerned" (p. 274).

> ### The South African Companies Act and Director Delinquency
>
> Section 162(5) of the Act prescribes when a board member should be declared a delinquent director. This includes but is not limited to when: (c)(I) a director grossly abuses the position of a director, (c)(II) takes personal advantage of information or an opportunity owing to the company, (c)(III) intentionally or by gross negligence inflicts harm on the company or a subsidiary, and (c)(IV) breaches trust in relation to the performance of the director's functions.
>
> CIPC (2011)

It is clear that unethical behaviour lies at the heart of transgressions mentioned in paragraph (c) above. The law allows for disqualification from being appointed as a director for a period of three to seven years upon being found guilty.

Employee blacklisting

Although use of the word 'blacklisting' is in itself somewhat of an ethical challenge, it is used widely in business circles to label those debtors that have lost their creditworthiness. The term is often also applied to employees. Many organisations maintain a database of those employees who have been found guilty of breaches of unethical conduct and some even share this information with other organisations. An example of the latter is the practice of South African banks to 'red-list' employees who have been fired for dishonesty on an electronic database to prevent them from slipping past screening processes when applying for new jobs in the industry.

A practice followed by South African Banks

'REDS' is an acronym for 'Register of Employees Dishonesty System', a system established in the mid-1990s by the Banking Association of South Africa ("the Association"). The Association represents all registered banks in South Africa. Its role is to promote responsible, competitive and profitable banking in all its members subscribed to a Code of Banking Practice, which aims to cultivate ethical practices within the industry.

The Labour Court acknowledged the REDS system as a legitimate integrity management system for recruitment and selection checks and as a screening resource. The Red List is subscriber based and accessible only to participating institutions. Red List subscribers follow a strict code of conduct when adding names to the database.

Ethics transgressions that may lead to the blacklisting of employees are serious incidents of unethical behaviour which irreparably damage the employer–employee trust relationship, for example:

- CV fraud
- Fraud
- Dishonesty

- Unfair discrimination
- Sexual harassment
- Theft

However, a past employer may not defame, slander or smear an ex-employee by sharing past-offender related information with prospective employers. Unfavourable information does not amount to libel, only untrue information.

It is a fact that few whistleblowers are reemployed if it is known that they have done so 'to' their previous organisation. Organisations that have been exposed to ethical scandal often overtly blacklist whistleblowers by bad-mouthing them and spreading rumours. This practice is, however, highly unethical and illegal. It is also unfortunate that organisations are reluctant to employ whistleblowers out of misplaced fear that these people cannot be trusted and might do the same to them.

Suppliers

> It is common practice to blacklist suppliers that have breached legitimate ethical expectations.

It is recognised (and mostly legal) international and local common practice to black-list suppliers that have breached legitimate ethical expectations of the organisations that they supply with goods and services. Suppliers' blacklisting results from failure to meet the buying organisation's corporate and social responsibility standards, especially in terms of values or ethics. An example of such practice is where the South African National Treasury Department may restrict suppliers who commit fraud, misrepresent facts, breach their contracts or engage in poor performance, etc. from doing business with the state. Barring suppliers who engage in bad governance practices and do not deliver according to what was contracted supports the state to ensure clean govern-ance and efficient service delivery. The list of such 'disbarred' suppliers is available on the government's website.

It stands to reason that there are conditions that should exist before blacklisting of a particular entity is formalised. Such conditions are suggested by ADR International (2021) as follows:

- There is universal agreement on the concern by internal stakeholders or by key opinion leadership;
- There is evidence of a violation of organisational standards; or
- The situation is considered unresolvable.

5.1 Monitoring and reporting: an overview

In ethics management, as with any other management area, it is important for the ethics office (and other role-players) to monitor their activities and interventions and report on these to the relevant governance and management structures, for example the Ethics Committee of the governing body.

There is an adage that what gets measured gets managed. While this needs to be treated with caution, there is a large dose of truth in it – especially in organisations. The bureaucratic nature of organisations means that if there is someone checking to see if things get done, it is more likely to be taken seriously. This is one motivator for monitoring and reporting on the ethics management process.

Another reason to monitor the implementation of the ethics management programme and specific interventions is that it will allow the ethics office (and the Ethics Committee) to obtain a more tangible picture of the ethics programme and its effectiveness. To an extent, one needs to know what story ethics interventions tell one about the organisation's ethics journey.
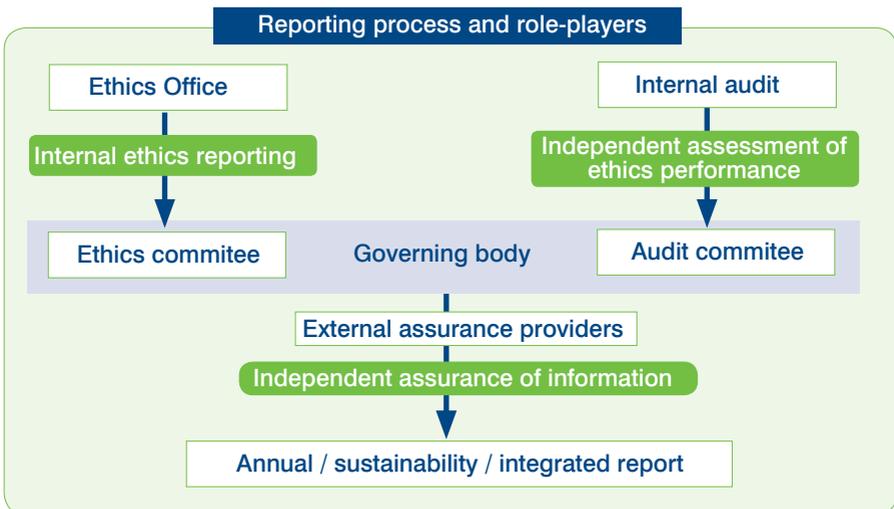
Reporting process and role-players (Dobie and Plant, 2014: 5)

There are three distinct processes in the monitoring and reporting of the ethics performance of an organisation:

1. The *ethics office* and other role-players keep data on the ethics interventions. This is then compiled into a report to the Ethics Committee.
2. The *internal audit* function conducts an independent assessment of the organisation's ethics programme and ethics performance, and reports this to executive management and to the audit committee of the governing body.
3. The *governing body*, as part of its annual reporting (as well as sustainability reporting) will report to external stakeholders on the interventions that ensure sound ethical governance.

In this section of the handbook, an overview of the monitoring and reporting responsibilities of the ethics office is provided. The other two components are dealt with in the *Ethics Reporting Handbook* (2014), a separate publication of The Ethics Institute.

5.2 Monitoring implementation of the ethics programme

Flowing from the ethics strategy, an organisation compiles an ethics programme, or ethics implementation plan. This sets out the ethics management activities that need to be implemented to achieve the strategic objectives, and assigns responsibilities, timeframes and budget requirements. The ethics programme might even be broken down into an annual implementation programme that assists with the year planning for the ethics office and other role-players.

One of the Ethics Committee's functions is oversight, and it will therefore be important to report on progress with implementing the ethics programme, as well as any barriers that the Ethics Committee might assist with removing. Ethics reporting provides assurance to internal and external stakeholders of the organisation's commitment to ethics.

5.3 Managing ethics information

It is difficult to tell the 'ethics story' of the organisation without information. Many of the ethics interventions that are implemented will generate data, and it is important to design systems to capture this data on an ongoing basis.

Most management areas will have some form of database, or information management system - not to be confused with the Ethics Management Information System (EMIS) discussed in section 3.9. The EMIS provides employees with access to ethics-related policies and processes, while the information management system is there to help the ethics office manage its data. This might sound daunting, but in reality it can be as simple as keeping a spreadsheet.

> ### It is difficult to tell the 'ethics story' of the organisation without information.

For example – if the organisation rolls out training and awareness campaigns, to capture how many people have been trained on ethics from which business units, and what topics they have been trained on. If disclosures of potential or real conflicts of interest are being managed, what proportion of designated staff have disclosed, how many potential conflicts have been identified and where in the organisation this is located.

One of the challenges of managing ethics information is that not all activities that tell the ethics story are necessarily within the mandate of the ethics office. In many organisations the ethics office is responsible for proactive interventions, while the reactive interventions fall under other functions, such as a forensic division. Even when it comes to investigations, cases are handed over between an investigating function and those who institute disciplinary processes (such as the labour relations function). It is therefore likely that it will be a challenge to ensure continuity of data from the discovery of a transgression to its resolution, unless the organisation has an effective whistleblowing management system. A further challenge will be to integrate all data to convey a coherent picture to the Ethics Committee. Overcoming these challenges requires the cooperation of multiple role-players and policy guidance on the management of information.

5.4 Reporting to the Ethics Committee

Committee meetings inevitably have more on the agenda than they can sensibly deal with. It is therefore important to consider the format of the report that is presented to the committee.

The following provides a useful framework for reports to the Ethics Committee:

1. Progress with implementation
   - How is implementation of the ethics programme progressing?
   - Where can the Committee assist with blockages?
2. Trends
   - What story does the data convey about:
     - Training and awareness
     - Disclosures of interest
     - Gifts
     - Approval for external remunerative work
     - Ethics advice requests
     - Ethics transgressions (including hotline reports), their investigation and resolution?
3. Critical incidents
   - Are there any major events that have occurred in the reporting period that the Ethics Committee should be aware of – for example: investigations involving senior members of staff, or with an impact on customers?
4. Strategic considerations
   - Are there external or internal events that require revisiting the ethics strategy – for example: mergers and acquisitions, or regulatory changes?

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Institutionalising Ethics Handbook

Making ethics real

This handbook debunks the myth that organisations cannot really influence ethics, and that the best case scenario is that 'ethics will (hopefully) happen'. The specific purpose is to show how ethics can be institutionalised in organisations, and we explain how ethics can be 'made real'. That is, how ethics could be 'taken to the people' involved in and with organisations.

All organisations in all sectors of society, irrespective of their size, need to manage their ethics. Either because of legislation or governance standards to this effect, or since they really should be doing the right thing to contribute to the sustainable development of society.

The handbook could be a useful companion to all those involved with the governance and management of ethics in organisations.

The Ethics Institute is an independent institute producing original thought leadership and offering a range of ethics-related products and services. All original research work produced by The Ethics Institute, including the *Ethics Handbook Series*, is freely available on our website: www.tei.org.za.