Designing and Implementing Effective Speak-up Arrangements

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Designing and Implementing Effective Speak-up Arrangements

Executive Summary

This is a practical guide on how to design and implement effective speak-up arrangements. It offers evidence-based guidance to senior managers, HR professionals and compliance officers in both public and private sector organizations. It is based on our comparative research in a health care organisation (an NHS Trust in the UK), a multi-national bank, a multi-national engineering company, and a central government in Southeast Asia. The research on speaking up arrangements in various organizations funded by ACCA and ESRC was carried out between September 2015 and June 2016. The guidelines presented draw upon this project.[i] The variance in types of organisations and their speak-up arrangements provides a valuable opportunity for us to identify and share best practices.

The guide:

- lists benefits of operating effective speak-up arrangements,
- introduces different types of speak-up channels, their strengths and weaknesses,
- provides detailed recommendations concerning how to design and operate speak-up arrangements.
- identifies the challenges an implementing organisation may face in due process
- suggests strategies that can be adopted to address them.

Why effective Speak-up arrangements are crucial:

New legislation and heightened media interest in whistleblowing have led to a greater focus on developing effective speak-up arrangements in today's organizations.[ii] New legislation is crucial to protect whistleblowers and to encourage whistleblowing. However, safe and effective whistleblowing is only possible if effective speak-up arrangements at the organizational level are in place. Merely encouraging employees to speak up, without putting robust response systems in place, is a recipe for disaster, for both employees and the organization. For organisations, these arrangements are part of reforming corporate governance, public sector accountability, and professional

responsibility. This section summarises benefits of effective speak-up arrangements for organisations, whistleblowers and the wider public.

Benefits of Effective Speak-up Arrangements:

1. For the Organisation
    1.1. Prevents financial loss: Both public and private sector organisations can save money by implementing effective speak-up arrangements. A recent research carried out in 40 countries showed that 40% of the 5,000-plus firms studied had suffered from serious economic crimes resulting in an average of over $3 million each in losses.[iii] 43% of these crimes were exposed by whistleblowers. This means that whistleblowing was more effective than all the other measures for preventing wrongdoing combined: corporate security, internal audits and law enforcement.
    1.2. Prevents reputational loss: Workers who voice their concern can help to prevent the dysfunctional behaviour that leads to reputational losses if there are robust response systems in place. In their absence, unresolved operational concerns lead whistleblowers to escalate their concerns to regulators and the press.
    1.3. Saves time and money on legal battles: Legal costs relating to whistleblowing disputes can be significant for both parties involved. Whistleblowing provides organisations the opportunity to address wrongdoing at an earlier stage. This prevents loss of time, money and effort in protracted legal battles.
    1.4. Creates organisational trust: Three of the organisations we studied had introduced their speak-up arrangements in response to a crisis of trust. In the engineering company this crisis was triggered by wrongdoing involving the organisation, which led to media attention, police intervention and regulatory sanctions. In the NHS Trust regulators carried out inspections following a whistleblower concern raised with them. In the bank the crisis in trust was triggered by scandals in the industry. All of these organisations rebuilt trust by implementing speak-up arrangements. Compliance officers from the

bank and the engineering company noted that the speak-up arrangements have changed employees' perception of their role from 'policing' to 'helping'.

2. For the Employee

   2.1. Prevents retaliation: Lack of procedures to receive and follow-up concerns raised by employees leads to exacerbated suffering and retaliation.[iv]

   2.2. Makes raising concerns more effective: proper arrangements for investigating and following up concerns allow for wrongdoing to be stopped at an early stage, so workers can continue to be committed to the organisation and their work.

3.   For Society

   3.1. Protects public interest: Our research shows instances where unresolved operational concerns had grown further into problems harming clients and the public interest. Examples from many sectors including the BP whistleblowers who could have prevented the Gulf oil spill, or the Piper Alpha disaster, the collapse of Enron, Worldcom and others, demonstrate how harm to the public and costs to the companies could have been prevented if whistleblowers' disclosures had been heeded.

   3.2. Maintains trustworthy institutions and organisations: responding to internal whistleblowing by correcting the wrongdoing and keeping the whistleblower unharmed creates institutions and organisations that can be trusted.

Recommendations:

Our comparative research allows us to identify best-practices in designing and operating speak-up arrangements drawing on

- a health care organisation (an NHS Trust in the UK),
- a multi-national bank,
- a multi-national engineering company,
- and a central government in Southeast Asia.

This section offers practical and detailed recommendations for organisations designing and operating speak-up arrangements.

1. Offer a variety of speak-up channels.

Effective speak-up arrangements are a combination of channels through which employees can voice a concern involving**:**

- Informal channels,

- Question channel,

- Key internal persons,

- Internal hotline,

- External hotline,

- External Ombuds-person,

- External independent advice channel,

- IT-based channels,

- Email and web applications.

Each of these channels has its own limitations. For example, their perceived accessibility exhibits differences depending on national culture and societal context. The extent to which any of these channels is used changes over time.

The engineering company we researched has operated a combination of speak-up channels for almost a decade. The management implemented these channels as part of an organizational overhaul of the compliance function. This function was centralized, given more independence, and grew tenfold. Initially the question channel was used the most as employees raised integrity-related questions through a web interface. Subsequently more employees began raising concerns through the externally operated hotline. More recently, in most of the regions where the company operates, employees have turned to open and direct communication. Their experience shows that familiarity and positive experiences with one channel positively affects trust in other channels.[v]

These experiences show that providing a range of speak-up channels

- allows these channels to compensate for each other's limitations,

- increases accessibility,

- caters to various national, cultural and organisational preferences,

2. Involve more than one function in your speak-up arrangement.

We found that organisations with speak-up arrangements operated by more than one function are more responsive. Functions such as compliance and HR should liaise with each other through clear protocols in a coordinated manner. This creates a division of labour in which each function applies its specialism. At the bank we researched, for example, Strategic HR owns the speak-up arrangement and liaises with the Special Investigations Unit (whose role would be to oversee compliance). One function is to 'mantle' the voicing employee and follow up their well-being, the other function investigates the potential wrongdoing.

We also noted that different functions owning the speak-up arrangements can set the 'tone' and encourage employees to voice concerns. For example, the bank we researched moved the oversight of the speak-up arrangement from the compliance function to the HR function at group level. This widened the scope of concerns taken into account, and shifted the attitude from 'policing' to well-being and engagement. This arrangement was supported by an additional free and independent advice channel that provided information on how to raise a concern and how the law protects those that do. These policies positively affected trust.

3. Build trust through speak-up arrangements.

Trust is crucial in encouraging employees to speak-up. So, it is often assumed that you should build trust before implementing speak-up arrangements. Our research shows that effective speak-up arrangements can actually help your organisation build trust. This process manifests itself through speak-up practices that evolve over time, and are supported by the independence of speak-up operators.

A crucial characteristic of channels that further trust is the level of independence of the speak-up operator. The perception of independence is based on speak-up operators' specialist role and rule-bound referrals. (We use the term 'rule-bound

referrals' for protocols and policies that specify rules for managers at different levels about how, when, and to whom within the organisation a concern raised by an employee must be escalated.) Where receiving and following-up speak-up concerns was central rather than marginal to their core job task, speak-up operators were able to

- keep focus on appropriate listening,

- objectively evaluate the quality of investigations,

- carry out and document end-to-end follow-up of concerns,

- spot potential wrongdoing underlying concerns that seemed unsubstantial or unfounded at first sight.

4. Be responsive.

Effective speak-up arrangements involve robust systems to respond to concerns. Be as responsive as you can. Explore whether employees who raised a concern can be included in developing a solution to the problem. This can increase trust in the effectiveness of the speak-up arrangement. It can be a valuable opportunity for positively changing collective understanding and behaviour.

Responsiveness needs to be well organised, clearly mandated, and adequately resourced. Follow-up activities must be planned and coordinated. Consider the following recommendations in order to build robust response systems:

4.1. Responding: Research shows that at least half of the concerns raised through speak-up channels are not about wrongdoing (harm to the public interest, breach of regulation, or breach of organisational policy). Such concerns are often disregarded as 'employee grievances' or just a nuisance. In our research there were examples where the compliance function had initially referred a concern to the specialist HR speak-up operator because they believed it had no compliance-related content. When the HR officer looked into the matter however, issues were uncovered that had relevance for compliance but were not initially mentioned by the employee. Therefore, it is important to prepare your organisation to respond to both grievance and wrong-doing related concerns for risk management purposes. Specialist speak-up operators

tend to be more capable of identifying operational, people management-related, or compliance-related risks at an earlier stage.

4.2. Investigation: As mentioned earlier, explore whether employees who raised a concern can be included in developing a solution to the problem. Seize the opportunity to increase trust.

4.3. Intervention: Design your speak-up 'back office' to investigate and intervene with regard to different types of concern. Be ready to deal with employee concerns triggered by the external environment. Scandals in your sector, country or at a global scale can change the attitude towards speaking up. A Latin American branch of the engineering company, for example, has experienced a sudden increase in speak-up events following a scandal that involved a publicly owned company operating in a different sector. A speak-up operator from the engineering company believed that the surge in the complaints they received resulted from the changing public attitude towards speaking up.

'The topic of corruption is very well spread in the (…) media nowadays. (…) I have the feeling that the overall population is completely upset about corruption or about any kind of wrongdoing. (…) But at the same time, the overall population starts to speak up, or it starts to complain against any kind of wrongdoing. (…) They are trying to use as much as possible these channels to correct things.'

5. Be aware of the barriers to responsiveness.

Being responsive does not guarantee being perceived as such. Inability to share the results of an investigation due to legal limitations or not having the contact information of an anonymous whistleblower may lead an organisation to be perceived as irresponsive. Nevertheless, it is the perceived response rather than the real response that matters for creating trust, which encourages employees to raise concerns in the future. For this reason it is important for managers and speak-up operators to understand barriers to being perceived as responsive and to develop strategies that address them. The failure to do so may create a culture

of silence or lead whistleblowers to escalate their concerns to regulators and the press. These barriers include:

5.1. Anonymous Concerns: Concerns are often raised anonymously for fear of retaliation. Communicating back to someone who voiced their concern anonymously is difficult, if not impossible. Anonymous speak-up often occurs through a purposely made email account, e.g. whistle333@hotmail.com. These email accounts are often used to raise a concern but not checked afterwards to see if there is a response. Therefore, the speak-up operator's efforts to communicate back inevitably fail. An added problem is encountered when additional information about the alleged wrongdoing is sought.

5.2. Legal Limitations: Privacy and data protection regulations limit what can be communicated about an investigation or outcome. Conveying details can inhibit legal proceedings against a wrongdoer. Therefore, speak-up operators often can only provide limited and vague information about investigations and outcomes. This may leave the voicing employee with the impression that their concern is not taken seriously.

5.3. Invisibility of the Response: Sanctions against a wrongdoer are not always visible to other organisational members. For example, a minor wrongdoing might be sanctioned by a reprimand or a formal warning. Invisibility of sanctions is an added barrier in demonstrating responsiveness.

6. Develop strategies to circumvent barriers to responsiveness.

Organisations can adopt various strategies to circumvent barriers to responsiveness. Some of these strategies directly address the problems listed above. Others are directed at creating a generalised perception of a responsive organisation.

6.1. Legal limitations: Speak-up operators should manage the expectations of voicing employees. To do so:

- o give them an indicative timescale of follow up activities

- o inform them of legal limitations that prevent you from providing a detailed response.

6.2. Invisibility of Sanctions: Some organisations rely on word-of-mouth amongst employees in making sanctions visible. A more strategic approach is to create a generalised perception of a responsive organisation by

- o communicating widely about concerns that were not related to wrongdoing,

- o engaging with the voicing employee in finding a solution to the problem: The NHS Trust that we studied provided a good example for this strategy. A staff member raised a concern related to an operational matter, which was not compliance-related. They formed a team to developed and implement a solution to the raised issue and included the voicing employee in the team. This proved to be a good opportunity for collective sensemaking.

- o reporting on the aggregated speak-up events: The NHS Trust we researched published answers to voiced questions or concerns where no other person is accused of wrongdoing, on the intranet visible to all staff.

- o being responsive to concerns that do not lead to investigations or sanctions: A supportive organisational climate is necessary in order to encourage whistleblowing. Because there are limits to organisations' responsiveness, it is important for management to seize every opportunity to demonstrate responsiveness. Responses to concerns that do not lead to investigations or sanctions should be considered as such opportunities because the response can be openly communicated within the organisation without breach of law.

7. Shape and coordinate attitudes to responding.

You should continuously reinforce the message to managers at all levels that responding to concerns is part of their role. You should also restrict their

discretion about how to respond to speak-up attempts. Giving a coherent and consistent response is crucial for building trust.

8. Involve third parties wherever possible.

Our research shows that involvement of third parties, such as unions, in the speak-up process is beneficial. There is typically no 'contracting' between a union and a company, and in this sense unions, like regulators, are not part of speak-up arrangements.[1] Theoretically, unions can give employees advice on how to raise a concern and even be a source of support. Our research shows however that this is not a common practice. Among the organisations we researched, only the NHS Trust explicitly lists this route.

9. Record all speak-up events.

Some concerns raised with speak-up operators will not lead to investigation or sanction. Such concerns, by themselves, may seem unimportant and not worth recording. However, recording all speak-up events is useful for:

9.1. recognising patterns of concerns resulting from underlying problems. This helps identify and interfere with issues at an early stage. The speak-up data will strengthen your risk management, beyond simply filtering for alleged wrongdoing worth investigating. Managers can use them to monitor risk cultures. In this sense, speak-up arrangements help organisations improve risk awareness and internal controls inproactive organisations.

9.2. collecting data for training purposes. Speak-up cases can be used for training purposes. Concerns about the confidentiality and safety of the whistleblower often deter organisations from doing so. But strategies can be developed to use speak-up data without endangering confidentiality and whistleblower safety. The engineering company that we researched, for example, used speak-up data in developing their

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[1] There is however literature that argues unions should be part of speak-up arrangements. See:
Lewis, D. and Vandekerckhove, W. (2016). Does following a whistleblowing procedure make a difference? The evidence from the research conducted for the Francis Inquiry. In Lewis, D. and Vandekerckhove, W. (eds) *Developments in whistleblowing research 2015*, 85-105, International Whistleblowing Research Network.
Vandekerckhove, W. and James, C. (2013). Blowing the whistle to the union: How successful is it?, *E-Journal of International and Comparative Labour Studies* 2(3).

training programmes. Their message focused on the 'back-office' process of what happens with an employee concern and they emphasised independence of investigation and follow-up.

9.3. monitoring speak-up climates and most-used channels. There are often differences among departments or regions within the same organisation in

- o frequency of speak-up events,

- o channels used,

- o and types of concerns raised.

Data on speak-up events can be used by managers and speak-up operators to identify these differences and design their speak-up arrangements accordingly.

10. Report.

Organisations can use the speak-up data by publishing aggregated numbers of speak-up events in the annual report. They can also participate in the development of a standard for the public reporting of data from speak-up arrangements, with some efforts to support this evident in the UK for example[vi].

We have identified benefits for organisations in publicly reporting data:

10.1. Positive interest from investors: One organization who recently published speak-up results in its annual report notes that they had received questions from investors[vii]. The queries were about the types of concerns employees had raised through the speak-up arrangement. The management interpreted this as positive interest from investors.

10.2. Internal transparency: An organisation participating in our research is publishes data publicly. A speak-up operator from that organisation explains benefits of reporting as follows:

'From that intense culture of internal transparency [and] of pride concerning the effective first steps already taken, the motivation arose to put certain figures in the annual report.'

Despite these benefits, organisations hesitate in reporting numbers publicly through the annual report. They fear an influx of questions from other stakeholders and misinterpretation of the data. The above mentioned speak up operator says:

> 'Sometimes we receive questions from journalists who want to have more detailed numbers. You cannot compare the incoming cases of one period, let's say one year or one quarter, with the disciplinary measures and the closing of the cases, because sometimes complex investigations take more than half a year or more than one year in total. Therefore, the numbers do mostly not refer to the same cases, they are just stating the in- and output of cases without saying anything about how much is still ongoing within the compliance organization. If we in one year have an incoming number of 100 cases and in parallel to that outline disciplinary measures in or closing of 60 cases, that does not mean we are only handling 60 of the 100 cases. We may very well have 40 open cases which are passing on to the next quarter or the next year.' (Engineering company interviewee B)

There are risks associated with misinterpretation of data by uninformed parties, and other first-mover disadvantages following from increased transparency. But these can be mitigated as more organisations publish data from their speak-up arrangements. This is likely to lead to emergence of a voluntary standard of reporting on speak-up data. Such a standard can also contribute to further development of best practices in designing and implementing speak-up arrangements.

11. Consider national and organisational culture.

Culture is an important factor in the effectiveness of speak-up arrangements. The channels preferred and overall speak-up climates in place for example, are shaped by culture. When implementing a speak-up arrangement, it is important to understand the potentially difficult interactions between organisational and national cultures in order to develop an appropriate strategy.

The engineering multinational that we studied provides good insights into the effect of culture on effectiveness of speak-up arrangements. Their speak-up

operators noticed that in some parts of the world people preferred to speak directly to a compliance officer. Calling a hotline or written communication through a web application did not appeal to them. The external ombudsperson was sometimes used to raise a concern in Germany, the Middle East and Asian countries, but much less by employees in the UK, US or Latin America.

The differences in speak-up channels preferred seems to be shaped by national culture. Yet, at times, organisational culture overrides national culture. The engineering multinational, for example, has a global expat strategy that ensures consistency across regions. Regional leaders are either nationals of the HQ-country or have several years of work experience with the company at the HQ.

Overcoming regional differences requires effort. As conveyed by an interviewee from Latin America, when the speak-up arrangement was initially rolled out, HQ had been clear enough on what structures, mandates, and reporting lines had to be implemented. However, it had taken a while for managers in Latin America to comprehend the rationale and the intended culture behind this.

12. Provide access in different languages:

For effectiveness of a speak-up arrangement, it is important to ensure accessibility in different languages especially in multinational organisations. The engineering company provides a good example in this regard. Its web-based and hotline speak-up channels are available in the languages of all the countries where it operates. It is telling that Latin American employees voiced their concern via these channels instead of the external ombudsperson because they assumed she would not speak Portuguese. On the other hand, having a shared conversational language (French) provided employees in the Maghreb and West Central African countries the chance to voice a concern directly to compliance officers. These examples show that provision of channels in local languages contributes to success of speak-up arrangements.

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[i] (http://www.accaglobal.com/content/dam/ACCA_Global/Research/ACCA-ESRC%20Effective%20Speak-Up%20Arrangements%20for%20Whistle-Blowers.pdf). The guide is also informed by the findings of an earlier project on whistleblowing in banking and finance industry funded by British Academy/Leverhulme Trust that was carried out between September 2013 and June 2015 (see a separate report), an earlier project mapping recipients of whistleblowing throughout the process funded by Public Concern at Work and University of Greenwich (see PCAW & University of Greenwich. (2013). *Whistleblowing: The Inside Story*.

London, Public Concern at Work/ University of Greenwich), and a research project on whistleblowing in the NHS commissioned by the Freedom to Speak Up Review and conducted by the University of Greenwich (see Vandekerckhove, W., Rumyantseva, N. (2014). *Freedom to Speak Up- Qualitative Research*. University of Greenwich).

[ii] Vandekerckhove, W. (2006). *Whistleblowing and organizational social responsibility: A global assessment.* Ashgate.

Devine, T. (2015). International best practices for whistleblowing statutes. In Lewis, D. and Vandekerckhove, W. (eds) *Developments in whistleblowing research 2015*, 7-19, International Whistleblowing Research Network.

Recommendation CM/Rec (2014)7 of the Committee of Ministers to member States on the protection of whistleblowers.

[iii] Devine, T. (2012). Corporate whistleblowers gain new rights and opportunities in the U.S. Available: http://blog.transparency.org/2012/10/01/corporate-whistleblowers-gain-new-rights-and-opportunities-in-the-us/ (accessed March 2016)

[iv] Alford, C.F. (2001). *Whistleblowers: Broken lives and organizational power.* Cornell University Press.

Devine, T. & Maassarani, T. (2011). *The corporate whistleblower's survival guide.* Berret-Koehler.

[v] Nooteboom, B. (2006). Forms, sources and processes of trust. In Bachmann, R. and Zaheer, A. (eds) *Handbook of trust research*, 16-36, Edward Elgar.

[vi] See Public Concern at Work's 'First100' campaign, in which organisations pledge to implement a speak-up arrangement in line with the Code of Practice published by the Whistleblowing Commission, committing to publish their speak-up figures in their annual reports. Two of the organisations in our research are participants of the 'First100' campaign in the UK. However, these organisations had signed up to First100 too recently to have experience with reporting speak-up numbers publicly.

[vii] As reported in Public Concern at Work's research into its First 100 companies.