

Chapter 4.

Language, culture and raising awareness to encourage whistleblowing in the public sector

Awareness raising is an important dimension of whistleblower protection, as it can help change the culture and language surrounding whistleblowing, and ultimately break down the barriers and negative connotations associated with disclosing wrongdoing. Nevertheless, almost half of OECD countries do not have awareness raising activities in place. Furthermore countries that provide whistleblower protection through provisions are far less likely to have these types of initiatives than countries with dedicated laws. This chapter examines the various awareness raising activities that have been implemented in OECD countries, and how they can encourage whistleblowing and promote an effective open organisational culture.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Communication is an essential characteristic of an open organisational culture. Communicating with employees about their rights and responsibilities and the resources available to them is integral to achieving an environment that functions on a basis of trust, professionalism and collegiality. Using clear and effective methods to communicate with employees can instil confidence among employees to voice concerns when they arise. Effectively communicating to employees about how they are protected by the whistleblower mechanisms in place highlights the importance of coming forward with suspected wrongdoing and reinforces the mutual interest of defending the tenets of integrity in the workplace and society. However, despite the organisational benefits and positive effects on staff morale, awareness campaigns of this nature are not common among OECD countries.

Half of OECD countries have awareness-raising activities

An open organisational culture and whistleblower protection legislation should be supported by effective awareness raising, communication, training and evaluation efforts. Communicating to public or private sector employees their rights and obligations when exposing wrongdoing is essential, as outlined in the 1998 Recommendation on Improving Ethical Conduct in the Public Service (OECD, 1998).¹ Principle 4 of the Recommendation states that: “public servants need to know what protection will be available to them in cases of exposing wrongdoing.” Awareness-raising activities could include the publication of an annual report by a relevant oversight body or authority that includes information on the outcome of cases received, the compensation for whistleblowers and recoveries that resulted from information from whistleblowers during the year, and the average time it took to process a case. The UK’s Civil Service Commission suggests including a statement in staff manuals to assure employees that it is safe to raise concerns (Box 4.1).

Box 4.1. Example of a statement to staff reassuring them to raise concerns

The Civil Service Commission in the UK promotes the inclusion of a statement in staff manuals that reassures employees that disclosures are protected:

“We encourage everyone who works here to raise any concerns they have. We encourage ‘whistleblowing’ within the organisation to help us put things right if they are going wrong. If you think something is wrong please tell us and give us a chance to properly investigate and consider your concerns. We encourage you to raise concerns and will ensure that you do not suffer a detriment for doing so.”

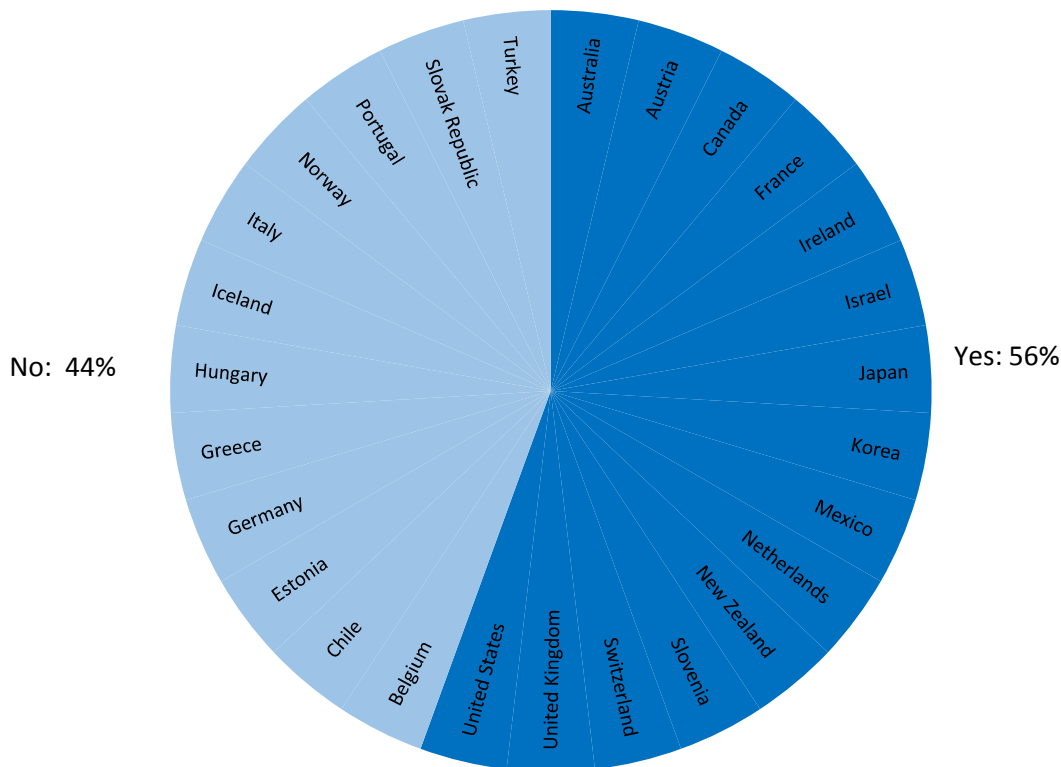
Source: UK’s Civil Service Commission (2011), *Whistleblowing and the civil service code*: <http://civilservicecommission.independent.gov.uk/wp-content/uploads/2014/02/Whistleblowing-and-the-Civil-Service-Code.pdf>.

A number of OECD countries have undertaken communication efforts, however only 15 have awareness-raising activities, such as manager training, that aim to change cultural perceptions and public attitude towards whistleblowing (Figure 4.1). In Germany and the Slovak Republic, whistleblower protection is integrated into the overarching topic of corruption prevention and reviewed as part of this training.

Countries with dedicated laws are more likely to have awareness raising activities

Among the 13 countries with dedicated whistleblower protection laws, 10 have whistleblower protection awareness-raising activities. Among the 14 countries with varying degrees of protection through provisions in other laws, only 5 have whistleblower protection awareness-raising activities. Countries with dedicated laws may therefore be in a better position to make headway in changing the culture surrounding whistleblowing.

Figure 4.1. Whistleblower protection awareness raising activities in the public sector in OECD countries



Notes: Respondents were asked the following question: “Have any awareness raising activities, such as manager training, with a view to changing cultural perceptions and public attitude towards whistleblowing been conducted in your country?”

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Source: OECD (2014), “OECD Survey on managing Conflict of Interest in the executive branch and Whistleblower Protection” (survey), OECD, Paris.

Requirements for awareness measures are sometimes stipulated in law

Some OECD countries have adopted provisions within their laws to ensure that awareness measures are in place. For instance, Canada’s whistleblowing protection system requires the minister and public bodies to: “promote ethical practices in the public sector and a positive environment for disclosing wrongdoing by disseminating knowledge

of this Act and information about its purposes and processes and by any other means that he or she considers appropriate.” (PSDPA, 2005)²

Furthermore, the President of the Treasury Board is required by law to promote ethical practices in the public sector and a positive environment for disclosing wrongdoing by disseminating knowledge of the Public Servants Disclosure Protection Act (PSDPA), especially its purposes and processes, by any means considered appropriate. According to the Treasury Board of Canada Secretariat’s 2013-2014 Annual Report on the PSDPA:

“based on information submitted by organisations, an increase in awareness activities and efforts has been observed for this reporting period. Organisations are becoming more and more active in promoting the PSDPA. They do so in different ways, such as awareness sessions and dialogue or training sessions intended for employees, managers and executives. In addition, written information is made available through emails to employees, internal websites, pamphlets and posters. Some organisations invite speakers, such as the Public Sector Integrity Commissioner, to give presentations to employees on the PSDPA. Many organizations also reported that a section of their organisational code of conduct is dedicated to disclosures under the PSDPA.” (Government of Canada, 2014)

In the United States, the Occupational Safety and Health Administration Act requires federal agencies to post certain information about whistleblower protection in order to keep employees informed of their rights regarding protected disclosures. There are also special programmes for awareness raising and training in agencies that deal with public procurement, such as the Department of Defence. As part of its whistleblower programme, the Inspector General supervises whistleblower protection and informs personnel of their rights through training. This programme has significantly increased public awareness through articles and briefings to public servants. Within the agency, the Directorate for Whistleblowing and Transparency provides advice, counsel and oversight capability to the Inspector General. Outreach efforts in the United States have been applied through a Certification Programme developed under Section 2302(c) of the Office of the Special Counsel (OSC), which has made efforts to promote outreach, investigations and training as the three core methods for raising awareness.³ Furthermore, the OSC offers training to federal agencies and non-federal organisations in each of the areas within its jurisdiction, including reprisal for whistleblowing. To ensure that federal employees understand their whistleblower rights and how to make protected disclosures, agencies must complete the OSC’s programme to certify compliance with the Whistleblower Protection Act’s (WPA) notification requirements.⁴

The No Fear Act in the United States requires that agencies provide annual notices and biannual training to federal employees regarding their rights under employment discrimination and whistleblower laws. Title 5 of the US Code renders the head of each agency responsible for: the prevention of prohibited personnel practices; compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management; and ensuring (in consultation with the OSC) that agency employees are informed of the rights and remedies available to them, including how to make a lawful disclosure of information that is specifically required by law or executive order to be kept classified (Box 4.2).⁵

Box 4.2. The United States’ approach to increasing awareness through the Whistleblower Protection Enhancement Act

In the United States, the Whistleblower Protection Enhancement Act (WEPA) places the responsibility with the head of agency to increase the awareness of the rights and responsibilities of whistleblowers. Under 5 U.S.C. § 2302(c) of the WPEA, it is stipulated that “the head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (...) that agency employees are informed of the rights and remedies available to them under (...), including how to make a lawful disclosure of information that is specifically required by law or Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs to the Special Counsel, the Inspector General of an agency, Congress, or other agency employee designated to receive such disclosures.”

Furthermore, Section 117 of the Act “designates a Whistleblower Protection Ombudsman who shall educate agency employees:

- I. about prohibitions on retaliation for protected disclosures; and
- II. who have made or are contemplating making a protected disclosure about the rights and remedies against retaliation for protected disclosures.”

Source: American Bar Association (2012), *Congress Strengthens Whistleblower Protections for Federal Employees*, Issue: November-December 2012, www.americanbar.org/content/newsletter/groups/labor_law/ll_flash/1212_abalel_flash/lel_flash12_2012spec.html.

In Japan, the Consumer Affairs Agency (CAA) holds explanatory meetings and symposiums nationwide for business operators, officials, and employees, to disseminate knowledge of the Japanese Whistleblower Protection Act (WPA). Additionally, in order to enhance the knowledge of officials in charge of dealing with whistleblowing within national and local governments, the CAA organises nationwide seminars that emphasise the necessity and importance of whistleblowing, and reinforce knowledge of the WPA and the guidelines.⁶

In Korea, the government has been implementing national strategies to raise public awareness of the benefits of whistleblowing and to strengthen protection for whistleblowers.⁷ For example, the Anti-Corruption and Civil Rights Commission (ACRC) introduced and promoted public interest whistleblower protection systems to chief executives of private companies, conducted promotional activities using storytelling methods through internet cartoons, and displayed and aired advertisements through television and subway billboards to promote whistleblower protection systems (ACRC, 2014a; 2014b).

Civil society can be an effective way of applying awareness-raising measures

In addition to awareness raising conducted by governments, a number of NGOs are active in the field. For example, in the United Kingdom, Public Concern at Work (PCaW) provides independent and confidential advice to workers who are unsure whether or how to raise a public interest concern. They also conduct policy and public education work and offer training and consultancy to organisations.⁸ In the United States, the Government Accountability Project (GAP), primarily an organisation of lawyers, defends

whistleblowers against retaliation and actively promotes government and corporate accountability.⁹

In recent years, these whistleblowing protection organisations have begun working together across borders to support new efforts to defend whistleblowers and respond to transnational whistleblowing issues and cases. The Whistleblowing International Network, co-founded by PCaW and GAP, among others, is one example.¹⁰ Transparency International, the global anti-corruption organisation, conducts advocacy, public awareness and research activities in all regions of the world. It has also established Advocacy and Legal Advice Centres in approximately 50 countries. These offer advice to whistleblowers and work to ensure that disclosures are addressed by the appropriate authorities.

Increasing awareness can positively impact the perception and language of whistleblowing

Increasing the awareness of whistleblowing and whistleblower protection enhances the understanding of these mechanisms and is an important way of improving the often negative cultural connotations linked to the term “whistleblower”. Communicating the importance of whistleblowing from, for example, a public health and safety perspective can help improve the public view of whistleblowers as important safeguards of public interest, and not snitches reporting on colleagues. In the United Kingdom, the cultural connotations of the term “whistleblower” have changed considerably (Box 4.3).

Box 4.3. Cultural connotations of “whistleblower” and “whistleblowing”: the United Kingdom

In the United Kingdom, a research project commissioned by Public Concern at Work from Cardiff University examined national newspaper reporting on whistleblowing and whistleblowers between 1 January 1997 and 31 December 2009. This included the period immediately before the introduction of the Public Interest Disclosure Act and tracked how the culture had since changed. The study found that whistleblowers were overwhelmingly represented in a positive light in the media. Over half (54%) of the newspaper stories represented whistleblowers in a positive light, with only 5% of stories being negative. The remainder (41%) were neutral. A similar study by YouGov found that 72% of workers view the term “whistleblowers” as neutral or positive.

Sources:

PCaW (2010), *Where’s whistleblowing now? 10 years of legal protection for whistleblowers*, Public Concern at Work, London, p. 17, www.pcaw.org.uk/files/PIDA_10year_Final_PDF.pdf.

YouGov (2013), *YouGov/PCAW Survey Results: Whistleblowing work concerns*, YouGov, London, p.8, <https://yougov.co.uk/publicopinion/archive/6888/>.

The Dutch translation for the English term “whistleblower”, is “*klokkenluiders*”, which means bell-ringer. Professor of Public Administration, Mark Bovens, coined the term in the 1990s in order to reflect Quasimodo, the hunchback of Notre Dame: “he believed that whistleblowers were the Quasimodos of our time: like the famous hunchback, they were fighting for a just cause but were taunted and treated as outcasts.” (Advice Centre for Whistleblowers in the Netherlands, 2013, p.32)

Box 4.4. Courage when it counts

In 2013, the campaign “Courage when it counts” was launched by the advice centre in the Netherlands. The idea behind the initiative was to portray whistleblowers as vulnerable heroes who put their fears aside to come forward with disclosures of wrongdoing. As part of this campaign, a series of photographs of employees with the courage to speak out were put on display. The aim of these visual representations was to provide an alternative image to that of ringing bells, which usually frame reports on whistleblowers in the Netherlands.

Source: Advice Centre for Whistleblowers in the Netherlands (2013), Annual Report: Courage when it counts, www.adviespuntklokkenluiders.nl/wp-content/uploads/2015/03/advice-centre-for-whistleblowers-in-the-netherlands-annual-report-2013.pdf.

The cultural perception of whistleblowers may constitute a significant barrier to implementing legislation on whistleblowing: “only if the good intentions of any law are matched by a change in culture can a safe alternative to silence be created” (ODAC et al., 2004). These cultural connotations need to be taken into account when developing and implementing whistleblower protection legislation. Activities must tackle deeply engrained cultural attitudes that may date back to social and political circumstances, such as dictatorship and/or foreign domination, when distrust towards “informers” of despised authorities was the norm (Council of Europe Parliamentary Assembly, 2009). Another cultural barrier may be power distance: people living in a low individualistic, high power distance country are less likely to challenge authority and those in authority are less likely to tolerate challenges (Morehead Dworkin, 2002), making it more difficult for whistleblowing to take place.

Reviewing whistleblower protection legislation can help evaluate its purpose, implementation and effectiveness

In order to ensure that mechanisms in place are meeting their purposes, countries should regularly review their whistleblower protection systems and the effectiveness of their implementation. If necessary, the legislations upon which they are based can then be amended to reflect the findings of evaluations. Provisions regarding the review of effectiveness, enforcement and impact of whistleblower protection laws have been introduced by a number of OECD countries, such as, Canada, Japan, and the Netherlands. The Japanese WPA specifically outlines that the government must take the necessary measures based on the findings of the review. In both Canada and Australia, the review must be presented before the House of Parliament.¹¹

Systematically collecting data and information is a way of evaluating the effectiveness of a whistleblowing system. This can include information on 1) the number of cases received; 2) the outcomes of cases (i.e. if the case was dismissed, accepted, investigated, and validated); 3) compensation for whistleblowers and recoveries that resulted from information from whistleblowers; 4) awareness of whistleblower mechanisms; and 5) the time it takes to process cases (Transparency International, 2013). This data, in particular information on the outcomes of cases, can be used in the review of a country’s legislation in order to assess whether the framework is working effectively to protect whistleblowers in practice.

Surveys can also be distributed to staff to review staff awareness, trust and confidence in these mechanisms. In the United States, for example, the Merit Systems Protection Board has gathered information by conducting surveys with employees about their experiences as whistleblowers (Banisar, 2011). Such efforts play a key role in assessing the progress, or lack thereof, in implementing effective whistleblower protection systems.

Raising awareness about the processes and safeguards in place to report wrongdoing, and communicating them effectively within an organisation, are important elements for the workplace culture to evolve into an open and supportive environment. Training management, meeting with staff regularly, and clearly outlining the steps to follow when disclosing wrongdoing (for example through promotional materials, public campaigns or staff guidelines) can assure employees of the measures in place to protect them from reprisal.

Evaluating the processes within whistleblower systems enables necessary modifications, which may help streamline and facilitate these procedures to be more able to in promote and uphold the tenets of integrity.

Notes

- 1 The Council invited the Public Governance Committee to revise the 1998 Recommendation on Improving Ethical Conduct in the Public Service to identify new integrity challenges and serve as guidance for innovative and cost-effective integrity processes and measures. The Council recognised the need to establish a whole-of-government 21st-century integrity framework. A Roadmap for updating the 1998 Recommendation was discussed by the Working Party of Senior Public Integrity Officials (SPIO) in March 2015. An updated Recommendation is expected to be published in late 2016.
- 2 Public Servants Disclosure Protection Act of 2005, c. 46, § 38.
- 3 See <https://osc.gov/Pages/Outreach-2302Cert.aspx>.
- 4 The OSC publishes a variety of materials on whistleblower disclosures. These publications can be printed from OSC's website at <https://osc.gov/>.
- 5 From response to OECD Survey on Public Sector Whistleblower Protection, Question 44. See 5 U.S.C. § 2302(c).
- 6 From response to OECD Survey on Public Sector Whistleblower Protection, Question 44. See <http://www.caa.go.jp/planning/koueki/shuchi-koho/index.html>.
- 7 From response to OECD Survey on Public Sector Whistleblower Protection, Question 44: Legal ground: Article 4 of the Act on the Protection of Public Interest Whistleblowers, “The Establishment of Policy of the Anti-Corruption and Civil Rights Commission.”
- 8 See <http://www.pcaw.org.uk/>.
- 9 See <http://www.whistleblower.org/>.
- 10 See www.whistleblowingnetwork.org.
- 11 See Australia’s Public Interest Disclosure Act Part 5 Section 82A, and Canada’s Public Servants Disclosure Protection Act 54.

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