

The state of whistleblowing in the financial services sector

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The state of whistleblowing in the financial services sector

Protect, the whistleblowers' charity, has published a new report looking at the recent experiences of whistleblowers in the financial services sector. We discuss the key findings and the learning points for employers in the sector.

The Silence in the City report was first published back in 2012 (**SITC1**), when Protect sought to probe why whistleblowers hadn't raised concerns over the financial crash and Libor scandal. The [Silence in the City 2 report](#)(**SITC2**) looks at how the experience of financial services whistleblowers has changed since the introduction of the FCA Whistleblowing Rules in 2016. The findings are based upon analysis of 352 cases of individuals from the financial services sector who contacted Protect's legal advice helpline between 1 January 2017 and 31 December 2019.

Who are the financial services whistleblowers?

- **Where do they work?** 73% worked in banking, finance or insurance, representing a 12% increase from SITC1. These organisations are all subject to the FCA Whistleblowing Rules, meaning they will have been required to communicate whistleblowing policies to staff and roll out a comprehensive training programme. These steps are likely to have contributed to a greater awareness amongst staff on how to blow the whistle.
- **How long have they worked for their employer?** 47% had under 2 years' service, which is slightly lower than the level recorded in SITC1 (53%), but still relatively high. One explanation for this is that newer staff are more likely to have fresh perspective and notice wrongdoing which has become normalised to longer serving employees.
- **What roles do they perform?** 39% occupy senior roles with managerial responsibilities (i.e. director, executive, partner or manager level roles) which was similar to the level recorded in SITC1. The figures were much lower for junior or technical-based roles. Protect's view is that the sector faces the challenge of empowering junior staff to raise concerns.
- **What is their employment status?** About two thirds were raising concerns about a current employer's practices

and about a third about a former employer's practices. These levels were similar to those seen in SITC1. It's important to remember that employees who blow the whistle after they have left employment still acquire whistleblower protection (see *Onyango v Berkeley Solicitors Ltd*) and so care should be taken not to subject such employees to any form of post-employment detriment.

What types of wrongdoing do the whistleblowers witness?

- **What types of wrongdoing form the subject of whistleblowing complaints?** The top six areas were:
 - Breach of legal or regulatory obligations – 19%
 - Fraudulent or criminal activity – 11%
 - Incorrect reporting to a client or third party – 9%
 - Breaches in data protection or client confidentiality – 7%
 - Competence or conduct of staff – 5%
 - Discrimination or harassment – 5%
- **The rise of discrimination and harassment:** notably, discrimination and harassment did not feature as one of the top forms of wrongdoing in SITC1. Its elevation may be due to the heightened attention on such issues as a result of the global #MeToo movement. Protect notes that whistleblowers raising concerns about discrimination and harassment are identifying a wider cultural problem in their place of work, rather than a personal grievance. They say: “...it may be more effective for a whistleblower, even if they are also a victim of harassment or bullying, to use whistleblowing arrangements because it has this wider public interest significance”.
- **Did reports tend to concern one-off or recurrent issues?** 78% raised concerns about recurring issues rather than one-off incidents. Employers should analyse whether the

whistleblower's colleagues also reported concerns (as they would likely have been aware of a recurrent problem). Further, over 57% of the concerns raised were characterised as "organisation-wide" issues, which, again, suggests that they would be recurrent and widely known about.

Where do whistleblowers raise their concerns?

- **Are whistleblowing raising concerns internally?** The good news is there is a greater level of trust amongst whistleblowers to use internal whistleblowing arrangements. This rose from 78% in the SITC1 to 93% in the SITC2. This suggests that the introduction of the FCA Whistleblowing Rules have promoted greater awareness and use of internal procedures.
- **Who are the most popular recipients?** The top seven recipients of concerns changed depending on the number of times the whistleblower had raised the concern (see table below). These results show that whistleblowers initially have confidence in their managers to resolve the matter, with 52% reporting either to their line manager or a director in the first instance and only 7% reporting externally to the FCA or PRA.

1st time	2nd time	3rd time
Line manager (28%)	Director (22%)	FCA/PRA (33%)
Director (24%)	FCA/PRA (22%)	Compliance / legal (21%)
Whistleblowing champion or equivalent (11%)	Compliance / legal (12%)	Director (18%)

HR (10%)	HR (11%)	Whistleblowing champion or equivalent (13%)
Compliance / legal (9%)	Whistleblowing champion or equivalent (9%)	HR (13%)
Senior manager (8%)	Senior manager (9%)	Senior manager (10%)
FCA/PRA (7%)	Line manager (6%)	Line manager (5%)

- **Are whistleblowers persistent?** Whistleblowers are becoming more persistent. In 2012 only one in five was willing to raise a concern for a second time. That figure has increased to almost one in three which is a marked improvement, again, suggesting greater trust in the system. Interestingly, the figures for those willing to raise it a third time were the same for 2012 and 2019, at around one in ten.
- **When are whistleblowers likely to go to the FCA or PRA?** By the time concerns are raised for a second and third time, confidence in the line manager drops to just 6% and then to 5%. By contrast, the willingness to go to the FCA or PRA jumps to 22% and then to 33%. This underlines the importance of training managers on how to identify and respond to whistleblowing complaints.
- **How useful are whistleblowing hotlines?** Interestingly, the report also showed that whistleblowing hotlines were not at all popular with whistleblowers. No-one raised their concerns with a hotline in the first instance and only 1% did so in the second instance (down from 8% in SITC1). Again, this suggests that whistleblowers have more confidence in the face-to-face internal channels

available for reporting. Whilst hotlines are a useful part of a whistleblowing strategy, it's clear they should not be the central focus for employers.

What treatment did the whistleblower face?

- **What are the outcomes for whistleblowers?** The reported outcomes for whistleblowers were overwhelmingly negative. Whistleblowers reported the following outcomes:
 - Victimised or disciplined by management – 31% (representing a 9% increase since 2012)
 - No action taken – 30%
 - Dismissed – 22%
 - Resigned – 12%
 - Victimised by co-workers – 4%
 - Suspended – 1%
 - Thanked – 0%
- **The prevalence of victimisation:** an astonishing 35% of whistleblowers reported having been victimised by management or co-workers. The research also shows that when the victimisation was reported to the employer, over half took no action (58%) and almost a quarter rejected the complaint (24%).
- **Failure to comply with the FCA Whistleblowing Rules:** these figures suggest a failure by some firms to give full effect to the FCA Whistleblowing Rules, which require a proactive approach to tackling victimisation. Indeed, in November 2018, the FCA reviewed how the rules were bedding in and noted that a number of firms still needed to develop or enhance their arrangements regarding protecting whistleblowers from victimisation, especially educating employees by way of training. Protect calls for the FCA to take a more robust approach and hold both firms and senior managers to account where whistleblowers have been victimised.

What action was taken on their concerns?

- **Are firms taking action?** 33% said that their concerns were ignored by the firm. 14% of concerns were denied. Only 15% were either admitted by the firm or otherwise resolved. In the remaining cases the investigation was ongoing, or the firm's actions were unknown. Linked to this is the fact that 75% of whistleblowers said they had received no feedback at all on the concerns they had raised. This represents a failure by firms to embrace the spirit of the FCA Whistleblowing Rules, which require firms to provide feedback "whenever feasible and appropriate". Firms need to review their approach here to make sure complaints are not being ignored and that whistleblowers are provided with appropriate feedback and are not frozen out.

Conclusion

So, what are the top five practical take-aways for employers operating in the financial services sector?

1. Analyse the seniority of those raising concerns through internal channels and consider whether further communications and/or training should be targeted towards junior level staff to empower them to raise their concerns.
2. Be mindful that employees are increasingly likely to use whistleblowing channels to report concerns about discrimination and harassment. Employers should ensure that HR teams and managers are trained in whistleblowing and are able to spot when (i) an employee raises issues which amount to both a personal grievance and a wider whistleblowing complaint and/or (ii) there is a pattern of similar complaints which indicates an underlying cultural problem.
3. Analyse reports concerning recurrent or organisation-wide issues and try to understand why others did not

also blow the whistle. Is there a lack of awareness of the internal process? Or a lack of trust in the process? Either way, seek to address the issue.

4. Focus on how you will protect whistleblowers from victimisation. Consider putting in place a system of regular check ins with the whistleblower for up to 18 months after the report has been raised to check that they are not being victimised. Ensure that all-staff training programmes clearly explain what victimisation is and how perpetrators will be dealt with.
5. Regularly benchmark your internal procedures against the FCA Whistleblowing Rules and ensure complaints are not ignored and feedback is provided to whistleblowers where possible.

If you would like to discuss any of the issues raised in this article, then please contact Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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