

2B.1 Internal reporting and whistle-blowing

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*The popularity of helplines is expanding internationally along with the global nature of company business practices. According to a Conference Board survey on the ethics programme of 165 companies worldwide, numerous countries have significant percentages of organizations with policies and procedures that encourage employee reporting of violations.*¹

Helplines across the world

Such global popularity has led to new legal and regulatory concerns regarding the use of helplines. For instance, the European legal system differs from the US one, and privacy laws vary tremendously. This can be especially challenging for businesses when exchanging information between multiple jurisdictions.

Recent legal decisions in France and Germany, ruling that “anonymous employee whistle-blowing hotlines, without certain precautions, are invalid or unlawful in those countries,” are now causing concern for many multinational public companies that must comply with the US Sarbanes-Oxley law and related rules.² For several European Union Member States (EU), Sarbanes-Oxley requirements may be in direct conflict with these decisions. US companies who have subsidiaries and employ-

ees in the EU with reporting mechanisms in place must now consider additional options to minimize risks in those countries.

Another consequence of the globalization of helplines is the potential impact of cultural differences that may govern its use. A World Bank Conference Board study found culture-based resistance to whistle-blowing to be less common in East Asia than in Europe.³ This study suggests that a lower incidence of whistle-blowing in Western Europe may “reflect a preference for other channels, such as work councils, labour unions, or even direct discussions with appropriate company executives.” The study further notes that whistle-blowing may be a risky proposition in France because Article 214 of the French Criminal Code makes denunciation of another person without just cause a criminal offence.

Anecdotal explanations have been generally offered in countries where there may be a culture-based resistance. For instance, respect for the chain of command is said to be embedded in Japanese business culture, thus making it unlikely that someone will feel comfortable reporting an issue outside that chain of command. According to Clarisse Girot, senior legal advisor for the Commission nationale de l'informatique et de libertés (CNIL), for cultural and historical reasons anonymous

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whistle-blowers are discouraged in France. “It’s very much related to World War II. Anonymous reports do not raise good memories in our minds,” says Girot referring to the experience under German occupation.⁴

The historical stigma of the whistle-blower as informer has its various cultural explanations, yet the discomfort is apparently universal. At this time there is no universal solution for disparate regulations and cultural norms, thus companies should monitor and perform a country-by-country analysis pending future multinational resolution.

Whistle-blower reporting mechanisms remain, however, one of the most effective means of fighting corruption and detecting fraud in organizations, be they public, private or governmental, or non-governmental. Because the most developed systems and the longest experience with whistle-blower programmes are found within the US private sector, the case story below is drawn from that pool of examples.

Whistle-blower case story

The attached case story is a short and specific account of the use of a whistle-blower helpline in working against corruption within an organization.

Background

This case description involves a large, publicly traded health benefits company in the United States that provides a range of medical and speciality products, including network-based health care services. The company offers various health plans, pharmacy, life and disability benefits in over 10 states.

The problem

The company had a large Information Technology (IT) department that tended to be viewed as a separate part of the organization. As a result, they were often overlooked when it came time to communicate and promote company-wide initiatives. The IT department was also suffering from poor morale and frequent turnover of programming staff.

A compliance and ethics programme, including a telephone helpline had been in place for approximately two years. A broad range of issues were reported through the helpline, including allegations of regulatory violations and employee misconduct. Feedback from employees regarding the helpline was generally positive with a percentage of callers (approximately 15 per cent) using the mechanism to seek guidance.

The helpline was active and averaged a volume of 1.5 per cent calls per 1,000 employees each year since inception. However, it was observed by the Compliance department that the IT department was the only segment of the organization that did not have a single employee make a report or seek guidance through the helpline. The Compliance department then realized that while all company regions provided basic training on the compliance and ethics programme, regional Compliance officers did not include IT staff as “regional” employees. Similarly, the corporate units did not include IT in their compliance training.

Drivers of change, key players, and trigger stakeholder group

The Compliance officer determined that a compliance liaison needed to be formally designated for the IT function. This liaison would be responsible for ensuring implementation of core compliance and ethics programme activities for the department. A new Chief Information Officer had recently been hired who was supportive of the ethics and compliance programme. As a result, IT employees finally began receiving basic training and communications regarding the company helpline. The stakeholders most responsible for bringing pressure to bear in addressing the problem were the IT department employees.

What happened

As training to IT employees became implemented across the organization, the usual initial surge of calls started coming to the helpline. The Compliance and Ethics department observed that calls coming from IT employees concerned the following major issues:

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- Questions regarding conflict of interests and hiring of family members;
- Allegations that certain managers (Director-level and above) were manipulating certain metrics to maximize their annual bonus.

The issues

Conflicts of interest

Upon evaluating questions regarding conflicts of interest and the hiring of family members, the compliance and ethics staff learned there was a wide-spread perception of favouritism and inappropriate reporting relations in the IT department. A review was conducted with the support of Human Resources (HR) that included questioning all IT managers about their direct reports and employees of their unit. It was determined that there was one instance of a family member (brother-in-law) of a manager who had been hired, but that person did not report to the manager and was in a different section of the IT organization. Still, managers occasionally would refer a friend or family member to another manager, and employees believed the referring managers exerted influence in the hiring process.

Because of the misperceptions, which were believed to be impacting morale, all the IT managers received training on appropriate employment practices (hiring, performance reviews, discipline and retention). Communications were also delivered to all IT employees explaining policies and practices regarding the hiring of family members.

Follow-up with callers to the helpline was conducted. Most of the callers were not anonymous, but confidentiality of their identity was maintained. The callers stated that the work environment in the IT department had noticeably improved. They also expressed gratitude that their questions had been answered and that the issue had been addressed. The callers felt their concerns were taken seriously when they saw the communications on hiring practices and when they were able to discuss is-

ues with managers during staff meetings. Staff retention started improving in the department.

Manipulation of data impacting

incentive compensation

Efforts were made to get more detail on these allegations from an anonymous caller. The HR leader responsible for incentive compensation noted that the same allegation was made by an anonymous letter the prior year, but it was difficult to investigate the matter due to limited information. For instance, there were over 10 managers with varying compensation factors who could potentially fall under the allegations. Further, the data sources on which some of the metrics were based were not centrally maintained, and controls were loose. A comprehensive investigation would have been difficult and time-intensive.

Through the telephone mechanism, ethics and compliance staff were able to obtain more information from the callers, thus isolating the metrics and impacted individuals. It was determined that the bonuses of a select few IT managers were indeed influenced by the data source in question, which was controlled by a non-manager with minimal oversight and controls.

Following interviews with the key individual and review of the data file (including forensic analysis), it was determined that one IT manager had misrepresented information provided to the staff person maintaining the data. Notably, this staff person also reported to this manager. As a result, the IT manager's bonus compensation was inflated.

The IT manager was subsequently terminated. The compliance and ethics department also worked with HR to review all bonus compensation arrangements to assess appropriateness and potential for data manipulation. Performance incentives were adjusted, and stricter controls on pertinent data files were implemented. The board and senior leadership began considering linking ethics and compliance-oriented conduct and measures to bonus compensation and other company incentives.

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Conclusion: Success in the correction of failures

This case story provides support for several basic tenets of an effective ethics and compliance helpline in uncovering, investigating and mitigating corruption.

First, a helpline is of no value if the workforce is not aware of it. Although a helpline was in place, it became apparent that a segment of the company had not been informed. It was helpline data that revealed this gap. Through a review and comparison of the data segmented by region, department and incident classification, it became obvious that the IT department had not used the helpline.

Once the IT department became part of the helpline communication plan, they began to call the helpline. Fortunately, promotion of the helpline to IT staff was not done in isolation. The Ethics and Compliance office obtained support from the CIO for designating an accountable liaison within the IT function. The support of department leadership likely influenced the success of the training and communications delivered by the Ethics and Compliance staff.

Awareness of a helpline is not sufficient to ensure success. The company made sure that issues and allegations were addressed and investigated, as needed. During assessment work we've done for Fortune 500 companies, employees who choose not to report wrongdoing indicate a belief that nothing will be done anyway, so why should they take the risk? Employees also cite fear of retaliation as a reason for not reporting.

Here, the Ethics and Compliance office established the credibility of the helpline as a resource to raise issues and report misconduct. The concern regarding nepotism and conflicts of interest was taken seriously, and although the situation did not exist as thought, the review went a long way to clearing the air.

Similarly, the investigation and dismissal of the manager who manipulated data to increase bonus compensation sent a message to the department that such conduct would not be tolerated. Without the report by an

anonymous caller, it is highly unlikely this scheme would have been uncovered. And the telephone mechanism enabled a degree of interactivity that supported a detailed investigation, which had not been possible by submission of an anonymous letter.

Finally, it should be apparent that the helpline, in addition to addressing the problem of corruption, proved to be a successful management tool. Before the helpline was utilized, the IT function was a hotbed of discontent and high turnover. Once underlying concerns were safely raised and addressed, employee satisfaction and retention improved. Clearly, the helpline supported a culture of compliance and ethical behaviour, which in turn fostered satisfaction in the workplace.

Note

This case story was written in coordination with and approval of the company described. The nature of the topic of fraud and corruption in companies is such that a number of clients whom we approached opted not to participate. Happily, the situation described is illustrative of similar experiences with whistle-blower helplines in a number of countries and among multinational corporations.

Endnotes

- 1 The Conference Board, "Ethics Programmes, The Role of the Board: A Global Study," 2003. Available at: <http://www.conference-board.org>.
- 2 Schreiber, Mark E., Jeffrey M. Held, et al., Anonymous Sarbanes Oxley Hotlines in the E.U.: Practical Compliance Guidance for Global Companies. *BNA International World Data Protection Report*, August 2005 (www.bnai.com).
- 3 Jean-Francois Arvis, Ronald E. Berenbeim, *Fighting Corruption in East Asia: Solutions from the Private Sector*, The World Bank, 2003, p. 57.
- 4 Pierce, Alan, French say oui to Hotlines but U.S. companies must learn the rules. *Compliance & Ethics*, March 2006 (<http://www.corporatecompliance.org/>).