

PROTECTION OF WHISTLEBLOWERS



Handbook

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Project against Economic Crime (PECK II)

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Project against Economic Crime in Kosovo* (PECK II) www.coe.int/peck2

Handbook on Protection of Whistleblowers

*This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence

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1. EXECUTIVE SUMMARY

This handbook on whistleblowing provides guidance to both the institutions and the potential whistleblowers in accordance with the Law No. 06/L-085 on Protection of Whistleblowers in Kosovo, including insights from international research. The handbook provides information and guidance on reporting wrongdoing, and on processing reports about wrongdoing. In addition, this handbook can also be used for training purposes, and for designing and implementing internal reporting systems.

Key considerations for whistleblowers included in Section 3 of this handbook are:

- ✓ reporting a concern can be stressful because of the many questions you will have before and after you have made the report;
- ✓ there are different types of wrongdoing covered by the law;
- ✓ you need to have a reasonable belief that the information you have is true and points at a harm or danger to the public interest, but you do not need evidence;
- ✓ there are three levels to report the wrongdoing, and you need to consider which one is the most appropriate;
- ✓ the law protects you from reprisal but there are also steps you can take to protect yourself.

Key considerations for institutions included in Section 4 of this handbook are:

- ✓ taking internal report seriously has many benefits for the institution itself, including improved fraud detection, improved risk identification, retention of employees, protection of reputation;
- ✓ how the institution responds to internal reports determines whether whistleblowers will report further to government agencies or the media;
- ✓ all stages of the whistleblowing cycle need to be managed well including: awareness, triage, investigation, action against wrongdoing, and institutional learning;
- ✓ it is good practice to provide different channels to report wrongdoing, including an online channel;
- ✓ institutions need to appoint a person responsible for keeping oversight of reports that are made and processed, and for ensuring the identity of the whistleblower is kept confidential whenever required;
- ✓ taking action against wrongdoing (or failing to take appropriate action) sends a signal to all stakeholders about the professionalism and integrity of the institution;
- ✓ protecting a whistleblower from reprisal is most effective when the risk of reprisal is assessed as soon as the report was made, and before actual reprisal occurs.

2. INTRODUCTION

This handbook provides hands-on guidance on whistleblowing, or the reporting of wrongdoing in institutions. The handbook will be useful for everyone, whether as basic training or for a specific role in an institution or agency. It is meant to facilitate both the whistleblowers, and the institutions.

For whistleblowers, the handbook provides information on what to expect, and what actions can make your reporting more effective and safe.

For institutions, the handbook provides guidance on how to make an internal meaningful reporting system for detecting wrongdoing at an early stage, and providing trust to all stakeholders.

The guidance formulated in this handbook is based on research and good practice across countries, sectors, and institutions.

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Diagrams are especially produced for this document by the author.

3. ACTING AS AND BECOMING A WHISTLEBLOWER

3.1 Introduction

This section provides guidance for persons being in a context of employment relationship in the public or private sector who want to make a report, or those who have already reported wrongdoing and need guidance on whether or not (and how) to make a further report. It will also be useful for people in other roles (someone receiving or investigating reports), who need to understand whistleblowers.

This part explains why it is normal to have many questions and uncertainties when you consider reporting wrongdoing. Guidance is provided on what you can report, what kind of evidence you need, who you can report to, and when you may consider a further report.

It also provides guidance on how to seek protection from reprisals.

3.2 Questions whistleblowers ask themselves

The research has shown that most of the whistleblowers are not sure whether they really are whistleblowers. Often, this is the case because the choice to report a concern through a whistleblowing channel comes after they have already spoken informally to someone in the institution.

People who consider reporting wrongdoing are very often not sure whether their information is enough to convince someone else that there is wrongdoing. They are also not sure whether the wrongdoing they have seen amounts to a breach of law or is severe enough for whistleblowing. Figure 1 gives examples of common questions people ask themselves¹ before whistleblowing.

¹ UNODC (2015), Resource Guide on Good Practices in the Protection of Reporting Persons. Available at: www.unodc.org/



Figure 1. Questions people ask themselves before whistleblowing

This status of uncertainty or 'not being sure' often continues after you have reported your concern. The person at the other end of the reporting channel is now looking into whether an investigation can be started, and if so to get the investigation started. This can take time, and the waiting can trigger further questions, as in figure 2.



Figure 2. Questions people ask themselves after reporting a concern

You might get a message from your institution or the agency you reported to, thanking you for reporting your concern and notifying that the investigation is now completed. This may trigger further uncertainties and questions, for example:²

- ✓ What were the outcomes of an investigation? Investigators might not be able to tell you the details of their investigation. If your report leads to uncover a crime, telling you the details of the investigation would threaten the prosecution of the wrongdoer.
- ✓ Has the wrongdoing stopped? If your whistleblowing is successful, the wrongdoing you reported will be stopped. However, this does not always mean that the wrongdoer will be fired. Hence, the success of your whistleblowing might not always be immediately visible to you. You might be tempted to investigate yourself by going into files. However, doing so can destroy your confidentiality and you might be breaching privacy regulation or step outside of your mandate.
- ✓ How am I protected at this stage? Reprisals against whistleblowers sometimes kick in at a later stage. Whilst it is important to remain careful, do try to focus on your work.

The main message here is that whistleblowing is accompanied by many uncertainties for the whistleblower, at any stage of the process. Many aspects of whistleblowing are not carried out in the open: your reporting is done confidentially or anonymously, the investigation must respect the presumption of innocence until proven otherwise, disciplinary measures against wrongdoers cannot always be made public, etc. Hence, it is not possible to take away all uncertainties the whistleblower faces. This can lead to stress.

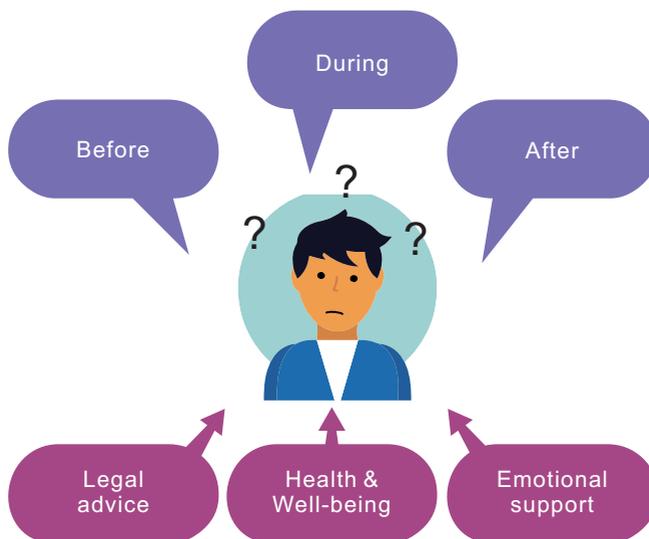


Figure 3. Uncertainties around whistleblowing can lead to endured stress for whistleblowers.

² UNODC (2015), Resource Guide on Good Practices in the Protection of Reporting Persons. Available at: www.unodc.org/

Whistleblowing is often effective and can be safe for the whistleblower. Studies show that the average across countries is that in 7 out of 10 cases, whistleblowing goes well³. Nevertheless, even when you follow the procedures and your whistleblowing goes well, it is likely that this will cause you some stress.⁴ It is therefore a good idea to seek legal advice from a qualified person, take care of your health and well-being, and search for emotional support when needed.

3.3 What wrongdoing can I report?

When you see wrongdoing or notice malpractice in an institution you work in, it is often not immediately clear whether to report the wrongdoing is in the public interest.

The wrongdoing might be a single event or reoccurring behaviour. A number of minor wrongdoings taken together might amount to a serious malpractice. Also, you might have received an awkward reaction when you questioned certain malpractice openly.

Reporting your concern can be in the public interest whether:

- ✓ your concern arises from a collection of minor wrongdoings, like pieces of a puzzle fitting together;
- ✓ it is a result of repeated malpractice, like drips that make a bucket overflow; or
- ✓ it gains significance from reactions you got when you openly questioned the behaviour.

It does not matter how it happened that you have a concern. Reporting your concern is in the public interest when the wrongdoing falls within the categories illustrated in figure 4. In principle, reporting or disclosure is presumed to be in public interest unless the contrary is being demonstrated.

³ Brown, A.J. (2008). Whistleblowing in the Australian Public Sector. Enhancing Theory and Practice of Internal Witness Management in Public Sector Organisations. ANU Press.

Brown, A.J., Moberly, R.E., Lewis, D & Vandekerckhove, W. (2014). International Handbook on Whistleblowing Research. Edward Elgar.

⁴ Brown, A.J. & Lawrence, S. (2017). Strength of Organisational Whistleblowing Processes - Analysis from Australia. Preliminary findings from the Whistling While They Work II project. Available at: www.whistlingwhiletheywork.edu.au

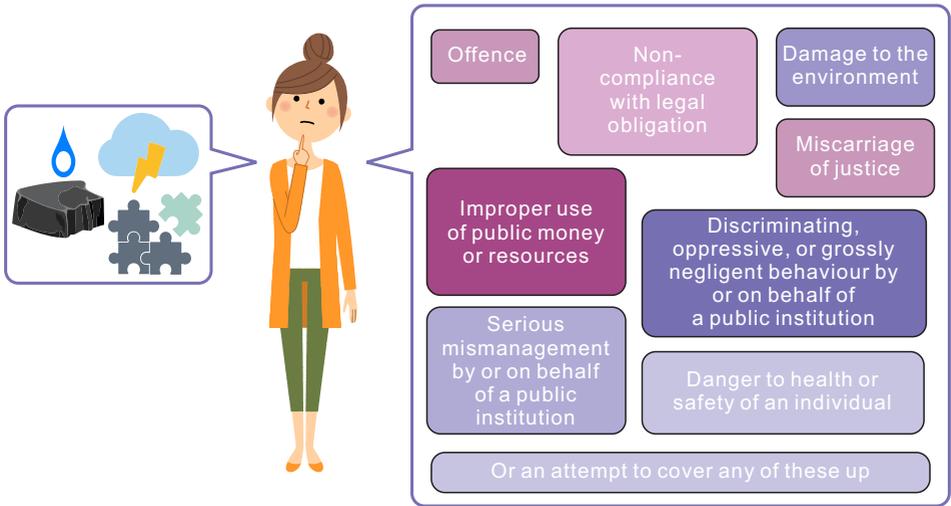


Figure 4. Categories of wrongdoing that fall within the public interest reporting

3.4 Do I need evidence?

What matters is that you believe the information you report is true. The law uses the notion 'reasonable belief', which means that based on the information you provide and which you believe to be true and in the public interest, a reasonable person would conclude that wrongdoing is taking place, has taken place, or is about to take place.

A 'reasonable belief' is not the same as 'evidence', which is a judicial term meaning a fact that makes it beyond doubt something else has occurred. You are not required to have evidence in that sense. You should not do detective work to collect evidence, as doing so might make you intrude on someone's privacy or try to access information you are not allowed to. Whistleblowing in the public interest does not require you to break any law.

However, when you make a report, try as much as you can to be clear about what you believe the wrongdoing is, listing your observations or experiences that lead you to hold that belief. A chronology is useful. You might have struggled some time with the decision to report the wrongdoing, but for the person receiving your report this might be the first time they hear about it. A clearly structured account will help them appreciate more quickly the seriousness of your concern.

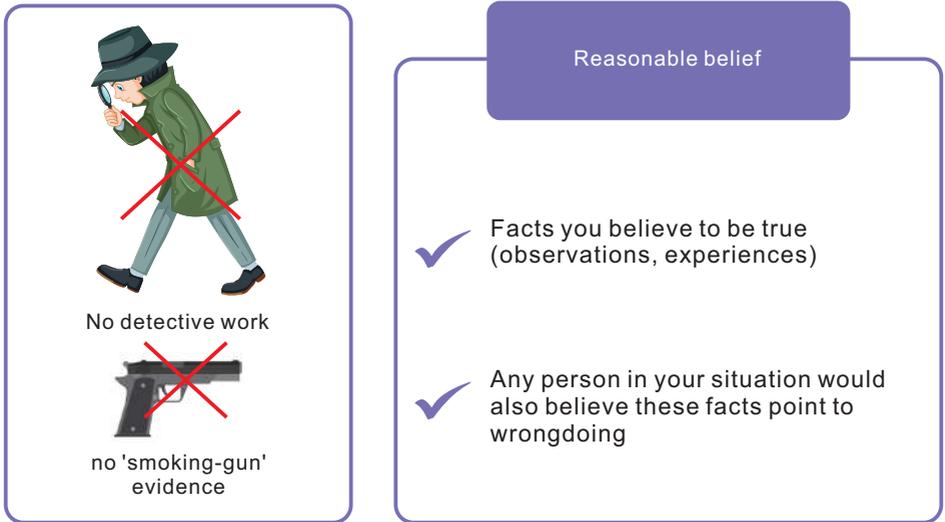


Figure 5. Reasonable belief versus evidence

When you have a concern that wrongdoing has taken place, is taking place, or is about to take place, you might not be certain that there is actual wrongdoing or the information you are reporting is authentic. The notion of 'reasonable belief' implies that even if you are mistaken, you still did the right thing to report your concern, and you will not be punished or lose your rights. However, reporting information that you know or must know is false constitutes making a malicious report, and the law will not protect you in that case.

3.5 How can I protect myself?

It is always necessary to follow the right procedure when reporting wrongdoing. Look for the policy of the institution you work for.

Most institutions will prefer that you speak openly about your concern. However, if you believe that speaking openly is not possible or too dangerous, make your report confidentially⁵ through the channel mentioned in the policy. The person receiving your report is required to keep your identity confidential. This means that he or she cannot tell anyone who you are without you agreeing to that.

You may want to make an anonymous report. However, if the persons receiving your report do not know who you are, they might be very limited in how they can protect you. Moreover, an anonymous report does not allow investigators to ask you for further information that can help them uncover evidence about the wrongdoing. Finally, if you have talked about your concern to colleagues or your manager before making your report anonymously, it is likely that persons being investigated will know it was you who made the report.

⁵ Council of Europe (2016). Protection of Whistleblowers: A Brief Guide for Implementing a National Framework.

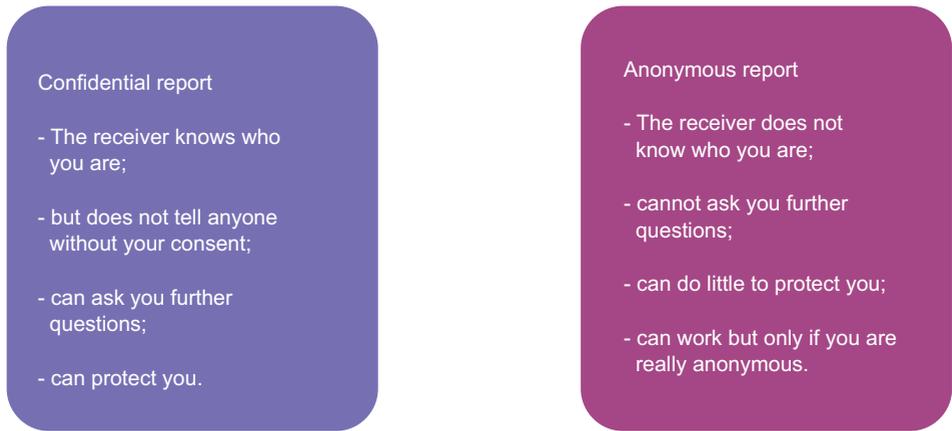


Figure 6. Confidential versus anonymous reporting

3.6 Who should I report to?

The best way is to report wrongdoing in the way that allows the wrongdoing to be stopped as quickly as possible. To whom a report is best made depends on who the wrongdoer is, what the wrongdoing consists of, and how your earlier attempts to report your concern went.

In any case, public whistleblowing to the media is an action of last resort⁶. You should seek other ways to report your concern first. Figure 7 gives an overview of the possibilities.

⁶ Vandekerckhove, W., (2010). European Whistleblower Protection: Tiers or Tears? In D. Lewis (ed). A Global Approach to Public Interest Disclosure, pp. 15-35.
Council of Europe (2014), Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the Protection of Whistleblowers.

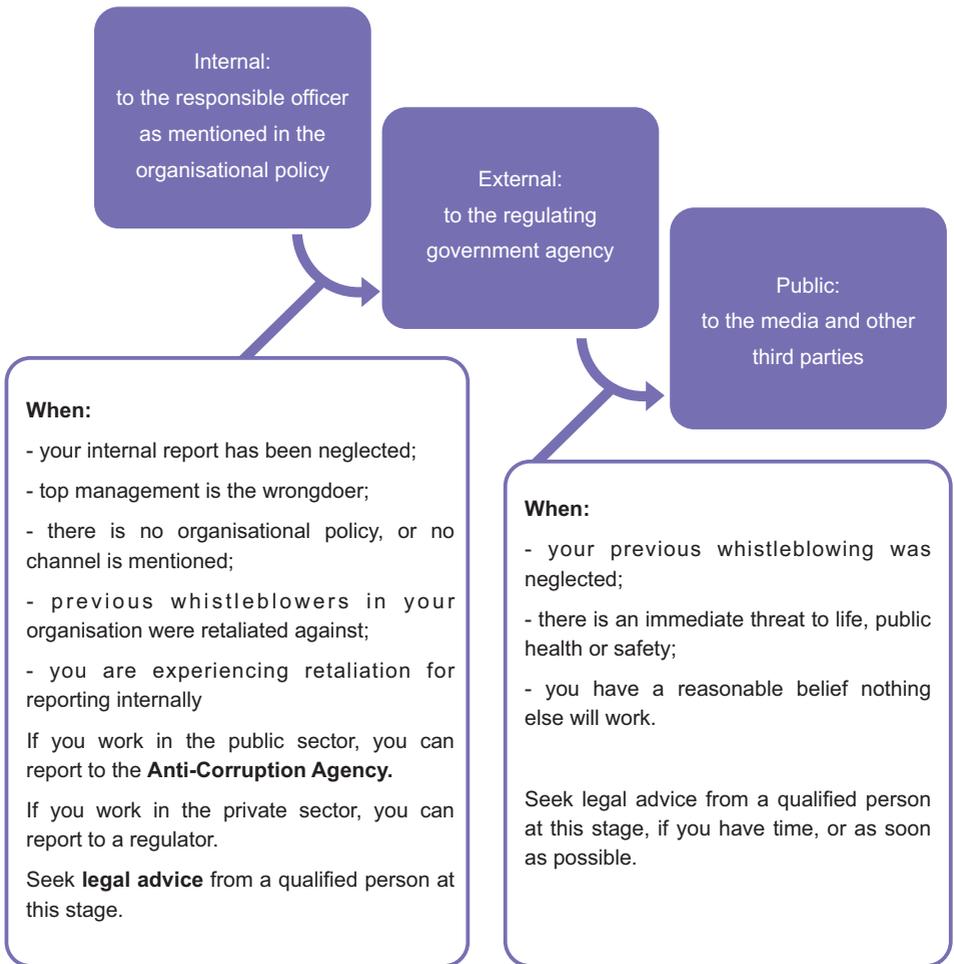


Figure 7: Internal reporting, reporting to a regulatory agency, and public disclosure

3.7 How do I structure my report?

When making a report, it is important to be as clear and factual as possible. You may wish to structure your report as follows:

I have a concern that a practice in the [company / institution] is harming the public interest.

My concern is that [public interest harm].

This belief is based on the following observations:

[List facts: what you have seen, heard, experienced]

[Indicate dates of facts]

These observations taken together make me concerned for the [company / institution] and the wider public interest.

[List to whom you have spoken before making this report (for example your direct manager)]

[If you are worried about reprisals, write this here]

[If you have experienced reprisals, write this here]

3.8 How do I know my report is being neglected?

When you report your concern about wrongdoing, the receiver will make a first estimate of whether there is enough information to work with. Criteria that may be used for this include:

- ✓ Does your report make the wrongdoing you point at plausible?
- ✓ Is the information detailed enough to start an investigation?
- ✓ What priority should be assigned to the wrongdoing you report?

This can take a couple of weeks.⁷ You should however be notified of any decision made by the person you reported to. If you have made an anonymous report, it will not be possible to notify you.

If you have reported confidentially, and you get notified that your report will not be taken further, you may want to ask for an explanation. In one hand, perhaps there was not enough information, or you might have been mistaken. On the other hand, the response you get here might be an indicator that you will have to report further to a regulator.

If your report is taken up and the wrongdoing is investigated, this will also take time. It is now important to stay in touch with who you reported to, so that you can give further information when possible and that the investigation can be conducted whilst keeping your identity confidential.

You should also get notified of the outcome of the investigation. You will not receive details of the investigation due to privacy regulation and ensuring due process of steps that might be taken with regard to the wrongdoer. This can be disappointing for you given all the uncertainties you have been dealing with so far. However, it does not necessarily mean that the wrongdoing is being covered up. You may want to ask why you are not given more information.

⁷ The law allows 45 days for this, which can be extended with another 45 days.

If, given the facts you reported, the outcome of the investigation is not credible, and you have a reasonable belief that reporting the wrongdoing is in the public interest, you may report further to a regulator or the Anti-Corruption Agency. Here too, both the initial estimate and the investigation may take some time. You should get notification of receipt, initial decision and outcome. You should at least wait six months before taking any further steps.

Hence, the key indicators of being neglected are:

- ✓ receiving no notification of decision or outcome,
- ✓ non-credible decision or outcome based on the facts you reported.

It is important to know that anyone who wants to stop you from whistleblowing is committing an offence (see also Section 5).

If you believe your report has been neglected, or someone wants to stop you from whistleblowing, you should seek legal advice from a qualified person.

3.9 What does protection mean?

The law protects whistleblowers who report in the public interest and according to the procedures, from a number of reprisals. However, the law can be used when reprisal is already happening, through seeking ‘interim relief’ and by challenging detrimental actions in a court case. There are also a number of measures that can be taken to prevent reprisals from occurring.⁸ This is depicted in figure 8.

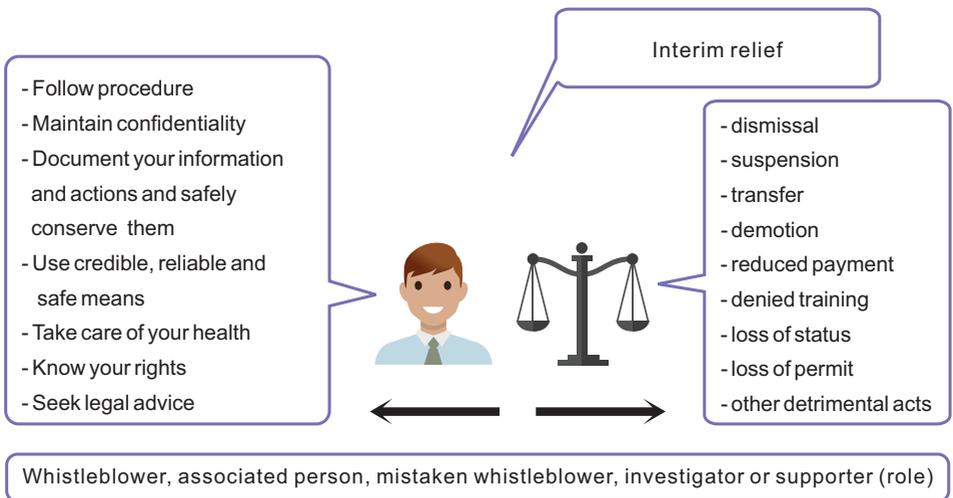


Figure 8: Protection avoiding reprisal and protection addressing reprisal.

⁸ Brown, A.J. (2008). Whistleblowing in the Australian Public Sector. Enhancing Theory and Practice of Internal Witness Management in Public Sector Organisations. ANU Press.

The best way to be protected is before you experience reprisal. In an institution with a good work culture, internal reporting will be effective and safe. Reporting channels will treat your report confidentially, making sure your identity is not revealed and providing you with advice and support. There are also a number of things you can do yourself. It is likely you have had doubts about whether to report your concern, and you might experience more uncertainties now that you have reported. This can be stressful. Hence, it is advisable to take care of your health and wellbeing.

You should also follow the procedure as mentioned in the institutional policy. If you ever need to call upon the law to protect you, it will be important to show that you have followed the appropriate procedure. If there is no procedure, or you have serious doubts about the effectiveness of the procedures, you should get legal advice from a qualified person before taking next steps.

Not all whistleblowers experience reprisals. But if they do, reprisals usually start with minor changes in behaviour from managers or colleagues, and then gradually build up⁹. It can be useful to take notes of what is happening, as this will help you to bring your case if you need to go to court.

If you experience a formal reprisal, for example a suspension, dismissal, or losing a licence, permit or contract, you can request interim relief from the court. You will need to seek legal advice for this and act quickly, but the law provides the possibility for a judge to reverse an action whilst the full case is going through the court. In this regard, the onus of proof has to be on the employer to establish that the detriment has no causal link with whistleblowing.

3.10 What if my report concerns national security or classified information?

If the wrongdoing you report, or the information you give in your report, is a matter of national security, defence, intelligence and international relations, you need to report to the competent authority in these areas and in accordance with related procedures.

4. INSTITUTIONAL MANAGEMENT OF WHISTLEBLOWING

This section contains guidance on how to design and implement a whistleblowing system in institutions. Effective and trustworthy internal reporting systems bring many benefits to the institution and to the wider society in which institutions thrive.

However, internal whistleblowing systems require more than a strong encouragement to report wrongdoing. Responding to report about wrongdoing must be done with due care.

Not listening to internal reports about wrongdoing or inappropriately responding to such concerns will harm your institution because you will be less effective in detecting and stopping wrongdoing.

Guidance is provided in this part on the different aspects of an effective internal reporting system: awareness raising, different reporting channels, triage, investigation, taking action against wrongdoing, and ways in which the institution can learn for how reports are made and handled.

⁹ Brown, A.J., Moberly, R.E., Lewis, D & Vandekerckhove, W. (2014). International Handbook on Whistleblowing Research. Edward Elgar.

4.1 Benefits for institutions

Operating an effective and safe internal reporting system incurs a cost to your organisation. However, this cost is offset by the different ways in which your organisation can benefit from such a system.

Benefits to the organisation include: 1) improved fraud detection, 2) discovery of areas of risk in your organisation, 3) improved retention of employees, 4) protecting your reputation.

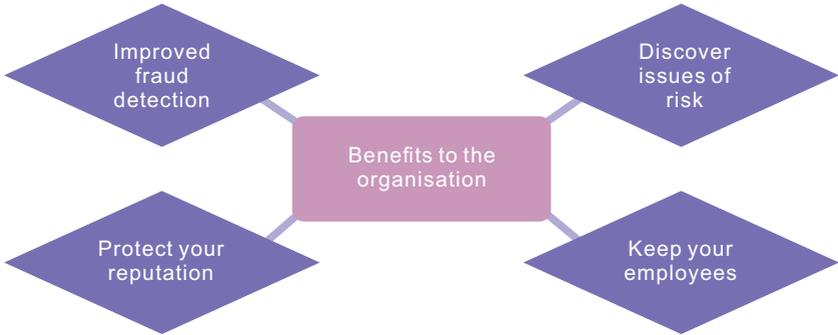


Figure 9: Benefits of internal reporting to the institution

4.1.1. Improving fraud detection

An internal reporting system makes easier and faster for you to detect occupational fraud in your organisation. Internal reporting systems are the most important way for management to discover internal fraud.¹⁰



Figure 10: Discovering fraud through internal reporting

Even without internal reporting systems, management will receive 'tips' about possible fraud occurring within the organisation. However, properly designed internal reporting systems can make your fraud discovery much more efficient.

¹⁰ ACFE (2016). Report to the Nations on Occupational Fraud and Abuse. Association of Certified Fraud Examiners.

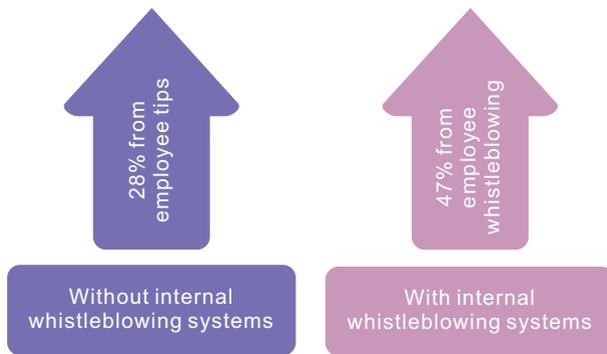


Figure 11: Whistleblowing enhances effectiveness

It is estimated that the amount of money your organisation loses because of occupational fraud will drop by 50% when you have an internal reporting system, and that internal reporting systems allow you to detect the fraud twice as fast than without such a system.¹¹



Figure 12: Whistleblowing enhances efficiency

4.1.2 Discovering areas of risk in your institution

An internal reporting system can help you to identify both current and potential hazards to your organisation. These can be of criminal, ethical or purely operational nature.

Not all internal reports will be about fraud, and not all internal reports will provide enough information to start an investigation.¹² Nevertheless, even reports that are at first sight 'useless' can provide valuable information about:

- ✓ perceived culture in your organisation,
- ✓ areas and issues around which employees are worried or have concerns.

¹¹ ACFE (2016). Report to the Nations on Occupational Fraud and Abuse. Association of Certified Fraud Examiners.

¹² ACCA (2016). Effective Speak-Up Arrangements for Whistleblowers: A Multi-Case Study on the Role of Responsiveness, Trust and Culture. Available at: www.accaglobal.com/

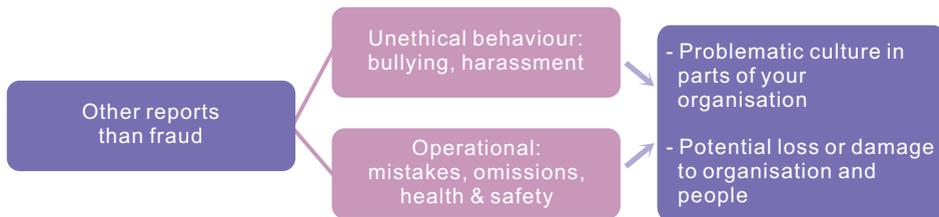


Figure 13: All whistleblowing can help an institution

Reports of alleged or potential wrongdoing and malpractice can provide information about who may be harmed and how, allowing you to take a more proactive approach to your risk management. Internal report systems allow every member of the organisation to be the eyes and ears for the organisation, thus bridging the gap between the everyday work floor and top management.

4.1.3 Retaining your employees

Institutions thrive on the loyalty and professionalism of their employees. Without an effective and safe internal reporting system, your organisation will not be able to respond to professional concerns in a respectful and professional manner.

This can damage the loyalty of the professionals you are keen to keep, and they might leave demoralised by your lack of professionalism and your perceived inability to take them serious as professionals.

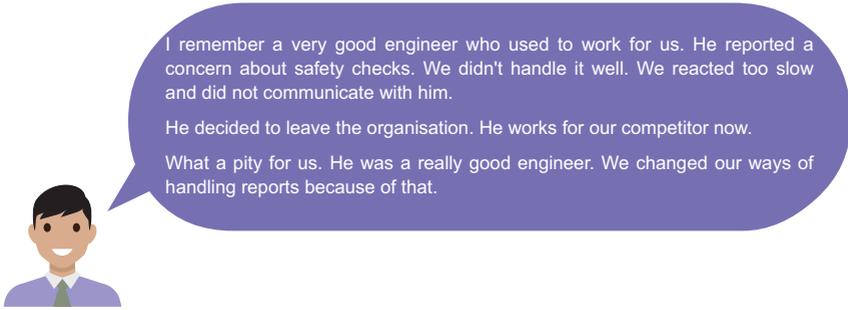


Figure 14. A manager's experience



Figure 15. A Director's experience

4.1.4 Protecting your institution's reputation

Employees who make an internal report do so because they do not feel able to raise the matter directly with the alleged wrongdoer or with their line manager, or they have already tried this. Whatever the reason, those who make an internal report still have trust in the organisation.

Hence, a well-functioning internal reporting system will give you the opportunity to discover and correct possible wrongdoing and malpractice before it escalates into a scandal, and authorities or media intervene.

An internal reporting system enhances your ability to listen and your willingness to respond. This makes it a vital part of building and maintaining strong reputations.¹³



Figure 16. A compliance officer's experience

¹³ ACCA (2016). Effective Speak-Up Arrangements for Whistleblowers: A Multi-Case Study on the Role of Responsiveness, Trust and Culture. Available at: www.accaglobal.com/

4.2 Worried about whistleblowers going to the press?

Did you know ?

Whistleblowing nearly always starts with people talking about their concerns to their immediate manager.

People usually try a second time to report wrongdoing to top management or an internal reporting channel.

If they are still neglected or experience negative consequences, they will consider reporting the wrongdoing to a government agency.

Disclosing wrongdoing to the media is nearly always a last resort.

If someone makes an internal report, it shows they still have trust in the institution. If the institution does not respond in a fair and professional way, the person will lose trust in the institution and might go reporting outside of the institution to a government agency or the media.¹⁴

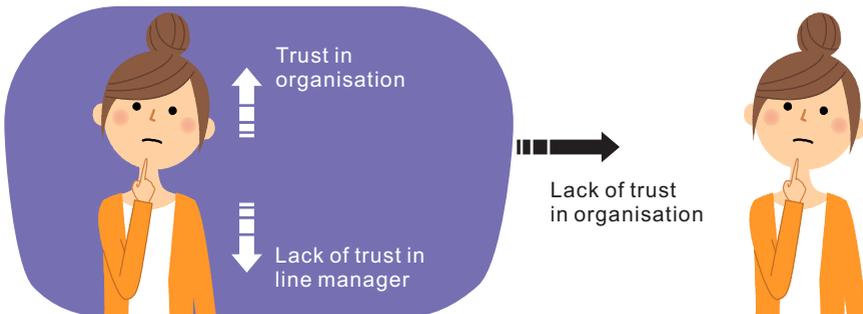


Figure 17. External whistleblowing is triggered by a lack of trust in the institution

¹⁴ Vandekerckhove, W. & Phillips, A. (2017). Whistleblowing as a Protracted Process: A Study of UK Whistleblower Journeys, *Journal of Business Ethics*. DOI: [10.1007/s10551-017-3727-8](https://doi.org/10.1007/s10551-017-3727-8)

The broken heating

A doctor in a children's hospital noticed that the heating in some patient rooms was not working. The hospital was old but the children were too cold!

He reported this to the medical chief, who told him to 'get lost'. Shocked by this response, he reported the broken heating and the irresponsibility of the medical chief to the hospital's top boss.

The next week, the medical chief made a grievance complaint against the doctor. That is when the doctor reported to the government agency that the hospital was harming patients.

An inspection came to the hospital and gave it a bad evaluation. The hospital fired the doctor.

The doctor went to the media and took the hospital to court. The hospital was shamed in the press and eventually lost the court case, after spending a lot of money on lawyers.

If only they had fixed the heating in the children patient rooms.

The invoice mistake

A young accountant started working for an energy company that had a big contract with the government. Soon after starting her job she noticed the amounts on the invoices were higher than the contract stated.

She pointed out this mistake to her team manager, who told her 'not to worry about that'. She knew that if they would send out that invoice, the company would be breaking the law.

She was shocked to learn that the inflated invoice went ahead. She reported this to the company headquarters, who sent her report to her team manager.

The team manager was furious, called her 'a rat' in front of a team meeting, and told her she was 'on her way out'.

She reported the wrongdoing to the government and took the company to court. The investigation discovered fraud and bribery, for which the company got a huge fine and was barred from government contracts. She also won her court case and the company had to pay her a compensation.

4.3 Do you have to call it whistleblowing?

Although internal whistleblowing or reporting can be an element of good governance and help institutions and society, these terms very often still sound negative.

Managers often fear that having an internal reporting system will create a 'snitch culture' in their institution.

It is true that implementing an internal reporting system impacts the culture of an institution, but this can also be a positive impact. If designed and operated well, an internal reporting system can build a culture of trust and professionalism.

You do not have to call it mandatorily 'whistleblowing' or 'reporting'.

There are plenty of alternative names for it. Some examples include:

- ✓ Speak up
- ✓ Speak out
- ✓ Ask us
- ✓ Tell us
- ✓ Raise concern
- ✓ Make your voice heard

The name is far less important than the process of responding to reports and communicating that process.

4.4 Managing the whistleblowing cycle

The institution has to appoint someone as the responsible official for the internal reporting system. This person has to keep oversight of reports coming in, how these are handled, and how the institution can learn from this and react accordingly.

For the responsible person, every whistleblower report represents a cycle of stages, as depicted in figure 18.

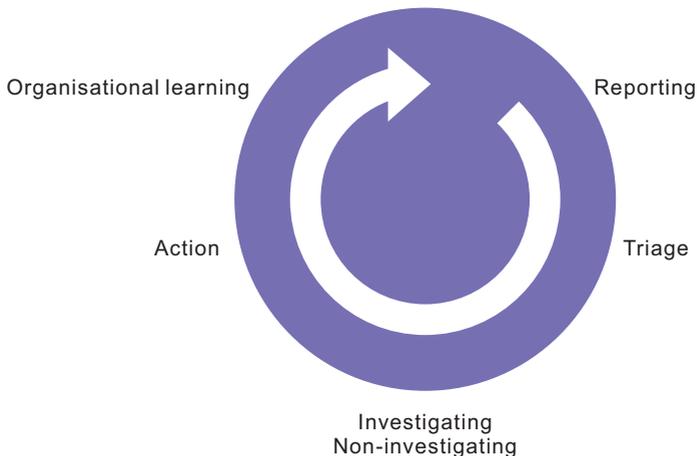


Figure 18: The cycle of whistleblowing stages

It is important that all stakeholders (whistleblower, alleged wrongdoer, management, owners) can trust the process. This means that the responsible person will need to be able to operate with independence and integrity.

4.5 Encouraging reporting

All people are capable of having concerns about wrongdoing. However, people differ in what they find a comfortable and trustworthy way of reporting their concern. These differences can depend on position in the institution, age, or technological competencies.

It is therefore good practice to provide and indicate different channels to report concerns about wrongdoing.¹⁵

Common examples include:

- ✓ named persons in the institution (e.g. compliance officer, HR director, non-executive board member);
- ✓ dedicated email;
- ✓ dedicated phone number;
- ✓ online interface;
- ✓ mobile application.

When deciding on the combination of reporting channels to provide, it is important to ensure that you include:

- ✓ channels using different interfaces (in person, voice, writing); and
- ✓ channels that allow open reporting, confidential reporting, and anonymous reporting.

When using a telephone channel, it is good practice to provide a dedicated toll-free number that is available 24/7 in the best case. Many institutions find it more practical and efficient to use an external provider for such services.

Channels with an online computer interface are becoming increasingly popular. The technology is available to create a secure channel that allows two-way anonymous communication between the whistleblower and the receiver of a report. Such channels can make the triage and investigation process more effective. Online channels require fewer resources to operate 24/7 across multiple languages.

Institutions are legally required to make employees aware of whistleblowing procedures.

This must be done:

- ✓ in writing;
- ✓ on a regular basis;
- ✓ on their premises and their website.

It is good practice to ensure that awareness campaigns:

- ✓ create a positive message around reporting wrongdoing - say it is professional and helpful for all;
- ✓ explain the process, not only how to make a report but also what will happen after someone made a report - this sets the right expectations and makes the reporting channel trustworthy;
- ✓ specify what confidentiality entails in relation to the whistleblower or any associated person, reported information and wrongdoer(s), and whether it is possible to make anonymous reports.

¹⁵ ACCA (2016). Effective Speak-Up Arrangements for Whistleblowers: A Multi-Case Study on the Role of Responsiveness, Trust and Culture. Available at: www.accaglobal.com/

4.6. Triage

The triage is the first step of responding to a report of wrongdoing. It is here that a decision is made on how to handle the report.¹⁶



Figure 19. The triage of received reports

A first decision that needs to be made is whether or not the reported wrongdoing can be investigated. This depends on:

- ✓ the risk and urgency of the reported wrongdoing to the institution; and
- ✓ the risk and urgency of the reported wrongdoing to stakeholders of the institution.

It might be that the report does not entail enough information to make that decision. In that case it must be considered how the whistleblower can be approached to ask for more information.

If the decision is made to investigate the alleged wrongdoing, then you will also need to decide:

- ✓ who will investigate; it might for example be more appropriate to hire an external investigator;
- ✓ what the expected timeframe is for the investigation;
- ✓ how best to approach the investigation so that the whistleblower's identity can be kept confidential.

It is important to communicate these decisions to the whistleblower.

If the decision is made not to investigate the reported issue, then it must be considered whether the issue raised in the report can be dealt with another procedure, for example a complaint procedure.

¹⁶ Brown, A.J. (2008). Whistleblowing in the Australian Public Sector. Enhancing Theory and Practice of Internal Witness Management in Public Sector Organisations. ANU Press.

It is important to communicate this decision to the whistleblower.

At the triage stage, the basic principle is to 'filter but not filter out'. You will need to decide on priorities and how best to allocate your limited resources for investigation. However, there is value in every report made, and even issues that do not entail wrongdoing might nevertheless be necessary to address. The triage must be carried out with appropriate independence from the everyday practice of the institution.

The triage must be carried out with due care to keep the confidentiality of the whistleblower and reported information.

4.7 Investigating

When a person reports wrongdoing through an internal reporting system, it is very likely that this person will have talked about this concern previously with their team manager or with colleagues (cf. section 2.3). Hence the way the investigation is carried out may risk breaching the confidentiality of the whistleblower's identity. For this reason it is useful to consult the whistleblower to discuss these risks.

If the person responsible for the internal reporting system has to inform other people of the whistleblower's identity, it is legally required to have written consent from the whistleblower for that.

4.8 Non-investigating

If a reported issue does not warrant an investigation under the whistleblowing procedure, you should still maintain the confidentiality of the report.

It is not unusual that at least half of the reported issues either have too little information or relate to inappropriate behaviour between individuals. You should be cautious not to simply delete these reports or leave them unresolved. Other procedures in your institution might be more appropriate to handle these. In any case, it will be important to communicate and explain your decision to the person who has made the report.

4.9 Taking action

After investigating an alleged wrongdoing that was reported, you need to take action.

If wrongdoing was found, action should be taken to:

- ✓ stop and correct the wrongdoing;
- ✓ sanction the wrongdoer in an appropriate way;
- ✓ communicate the outcome to the whistleblower.

If wrongdoing was not found, action should be taken to:

- ✓ communicate the outcome to the whistleblower.

How you handle and respond to a report of alleged wrongdoing always sends a signal.¹⁷ If you take action to stop wrongdoing and sanction the wrongdoer, you send a signal that the institution is responsive and professional. It sends that signal to the whistleblower, the wrongdoer, and all the others in the institution.

¹⁷ Vandekerckhove, W., Brown, A.J. & Tsahuridu, E. (2014). Managerial responsiveness to whistleblowing: Expanding the research horizon. In Brown, A.J., Moberly, R.E., Lewis, D & Vandekerckhove, W. (2014). International Handbook on Whistleblowing Research. Edward Elgar.

If you fail to take action, you send a signal that says:

- ✓ reporting wrongdoing is useless;
- ✓ people can get away with unethical or unprofessional behavior.

If you fail to take action, the wrongdoing will grow and eventually harm the institution and its stakeholders while potential whistleblowers would progressively lose trust.



Figure 20. Responding to reports carries feedback to various parts of the institution

4.10 Institutional learning

You are legally required to register and maintain records of whistleblowing reports in your institution. You might need to provide the Anti-Corruption Agency with that data.¹⁸

Institutions have found this data useful for training or awareness purposes, as well as for evaluating and improving their whistleblowing processes and procedures.¹⁹

Whistleblowing reporting can be useful for training as it can tell you the following:

- ✓ what the issues are that people in your institution have concerns about;
- ✓ through which channels people in your institution prefer to report a concern, and how these preferences change over time;
- ✓ which teams or departments in your institution have specific needs in terms of professional culture, ethical issues, management style, etc.;
- ✓ which examples of internal reporting have been very beneficial to the institution and its stakeholders.

It can be useful to evaluate your whistleblowing processes and procedures in the following ways:

- ✓ determining how you can improve your awareness campaign(s) which enable changes in attitudes towards whistleblowers and whistleblowing;
- ✓ exploring possibilities how you can improve your communication throughout the whistleblowing cycle through clear and effective methods;
- ✓ looking at adverse events that happened over the past year in your institution, you can check which ones were reported and which ones were not. This analysis can inform you about potential improvements to each of the stages of your whistleblowing process and procedures as well as regarding the overall mutual trust environment.

When registering data about reports of wrongdoing, it is important to comply with legal restrictions on the processing of personal data.

¹⁸ Institutions, regulators and private entities are required to prepare a document by 31 December stating the number of reports made in the institution, and the actions taken in response to those reports. They are required to submit this information to the Anti-Corruption Agency by 31 January. The Anti-corruption Agency shall publish a general annual report on Whistleblowing by 31 March.

¹⁹ ACCA (2016). Effective Speak-Up Arrangements for Whistleblowers: A Multi-Case Study on the Role of Responsiveness, Trust and Culture. Available at: www.accaglobal.com/

5. PROTECTION OF WHISTLEBLOWERS

Globally, around 30% of people who report wrongdoing in their institution experience some form of reprisal, either from their managers or from their colleagues.²⁰ Hence, protection of the whistleblower is a vital element of making internal reporting systems work positively for an institution.

Provided that legal requirements and established procedures are respected, as a rule a whistleblower is protected against litigation in any criminal or civil or disciplinary procedure that is triggered as a result of whistleblowing.

The fact that reporting is made in "good faith" has not to be demonstrated as long as the public interest requirement is met. The merely fact that alleged threat or damage to the public interest is not materialised cannot however prejudice the level of protection in favour of the whistleblower.

An important aspect of protecting the whistleblower lies in maintaining their identity confidential whenever requested as well as ensuring protection of the information reported. As an exception, the identity of the whistleblower may be revealed only with his/her written consent or for the execution of a legal obligation (i.e. effective investigation of legal violations or the prevention of crime or the prosecution of a criminal offence). In such circumstances, the whistleblower has to receive prior notification before his/her identity is revealed.

Judicial protection may be sought by whistleblowers at any time when reprisals occur and without obligation to exhaust internal legal remedies in administrative procedure.

As a whistleblower, you should know your statute of limitation which is the time period you can file a lawsuit to court against a detrimental act taken following your whistleblowing activity. This time period to address your lawsuit to the competent court is between 6 months from the notification date about the detrimental act (or, in its absence, the date you learnt about it) but no later than 3 years from the date when it occurred. You also have the possibility to request compensation of damage already suffered.

The new Criminal Code (Law No. 06/L-074, Article 388, paragraph 2) introduces a criminal offence against any person who takes harmful action against whistleblowers with the intent to retaliation for reporting or disclosing information for acts or omissions that pose a threat or violation of public interest.

In practice, the most effective way to protect a whistleblower is to assess the risk of reprisal as soon as the whistleblower makes a report, i.e. at the triage stage, as depicted in figure 21. Making a risk assessment as early as possible will prevent reprisal from occurring, and will also make you prepared to take quick action should reprisal occur.²¹

²⁰ Brown, A.J., Moberly, R.E., Lewis, D & Vandekerckhove, W. (2014). International Handbook on Whistleblowing Research. Edward Elgar.

²¹ Brown, A.J. (2008). Whistleblowing in the Australian Public Sector. Enhancing Theory and Practice of Internal Witness Management in Public Sector Organisations. ANU Press.

Brown, A.J. & Lawrence, S. (2017). Strength of Organisational Whistleblowing Processes - Analysis from Australia. Preliminary findings from the Whistling While They Work II project. Available at: www.whistlingwhiletheywork.edu.au

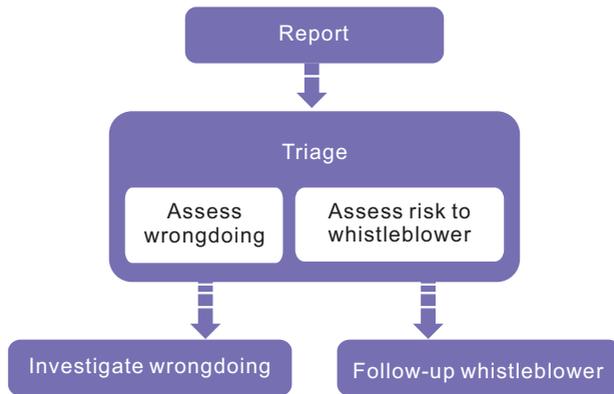


Figure 21. Assessing risks of reprisal before actual reprisal happens

6. CONCLUSION

Undertaking to establish and implement an overall system for the protection of whistleblowers is not an easy task.

The introduction of a rather advanced legal framework is only the first step in this regard. The institutional framework covering both the public and private sectors and in particular the use of introduced mechanisms and the emergence of a certain practice remain to be put in place.

Expectations and hopes of different stakeholders were expressed in many occasions in light of all efforts undertaken to improve mechanisms in this area and with due respect to previously difficult experience.

Given all measures that should be put in place and despite the difficulties that can appear, real commitment to effective protection of whistleblowers would have the potential to better contribute to all parties involved and to the overall public interest.

The experience will be a key asset in testing the strengths and weaknesses of the system and future work to improve it further.

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■ This handbook provides hands-on guidance on whistleblowing, the reporting of wrongdoing in institutions. It will be useful as a guidance to governmental agencies as well as for trainings on this topic.

For whistleblowers, the handbook provides information on what to expect, and what actions can make reporting more effective and safe.

For institutions, the handbook provides guidance on how to create an internal meaningful reporting system for detecting wrongdoing at an early stage.

The guidance formulated in this handbook is based on research and good practice across countries, sectors, and institutions.

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