

Being called a traitor by Dick Cheney is the highest honor you can give an American.

– Edward Snowden, *Foreign Policy*, 2013

Chapter 13

WHISTLE-BLOWING

SUMMARY

In this chapter, we examine the vital role of the whistle-blower in exposing corruption, and having the strength of character to do what is right, often at the expense of their job, career, family and personal safety. We learn about the steps in the process, either through internal or external disclosure.

LEARNING OUTCOMES

- Gain an understanding of famous and anonymous whistle-blower cases and instances where whistle-blowers have been harmed or murdered. Consider their unique qualities, and the sacrifices they face.
- Understand the hierarchy of evidence needed, the risks associated with getting this information, and the impact of privacy laws and employment contracts, including confidentiality agreements.
- Consider the steps involved in whistle-blowing with advice and precautions that need to be taken along the way.
- If evidence is to be disclosed externally, consider the relative merits of going to enforcement authorities or an investigative journalist.

KEY POINTS

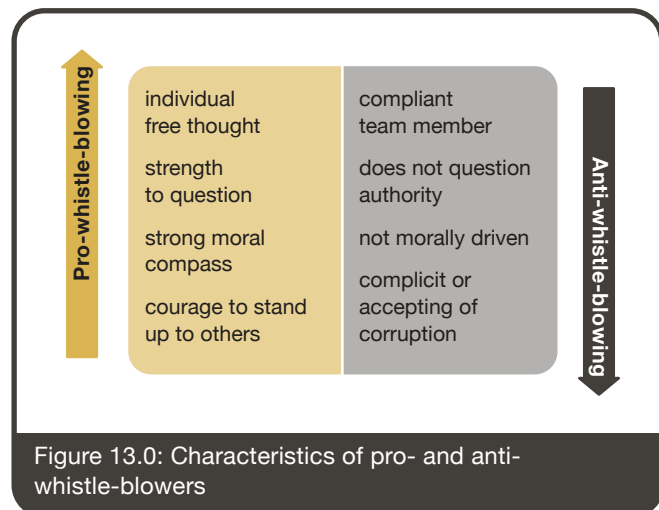
- Whistle-blowing – a vital activity – requires a diligent approach and acceptance that personal sacrifice is needed for the greater good.
- Potential whistle-blowers and their advocates need to give careful consideration to personal safety and whether disclosing evidence of corruption without being identified is possible.
- Treat organizational procedures with skepticism if you have any doubts over the integrity of the organization’s management or if you see potential for a leak that might expose the would-be whistle-blower to harm.

In this chapter, we examine the values that make whistle-blowers unique. What makes them different to others who actively support crime, or passively turn the other way? We also look at how society reacts in the face of corruption, as highlighted by Cynthia Cooper in *Extraordinary Circumstances: The journey of a corporate whistle-blower*. In what has been described as the “largest fraud in corporate history” Cooper – a corporate whistle-blower in the WorldCom multi-billion dollar fraud case – highlighted “how power and money can change people, and how easy it is to rationalize, give in to fear, and cave under the pressure of intimidation” [13.1].

The nature of whistle-blowing and society’s reaction to it is examined in Tom Mueller’s *Crisis of Conscience: Whistleblowing in an age of fraud* (p 199):

Whistleblowers highlight some of America’s greatest strengths and most dangerous weaknesses. They are a characteristically American phenomenon, an expression of cherished national values: egalitarianism, free speech, individualism, fair play, a hatred of tyranny, and the courage to rebel against it, in their words, their actions, the Founders often behaved like whistleblowers. Yet the violent retaliation many whistleblowers suffer – and the fact that we as a society tolerate it – also suggests that many of us sense something deeply foreign in them. If whistleblowing fits with our much-heralded love of justice and freedom, it also clashes with other marked American traits like loyalty, respect for authority and a reflexive patriotism [13.2].

Mueller’s insightful observations about society are not purely attributable to Americans. As the case studies will show, whistle-blowers across the world share them. The characteristics of the agitator and opposing forces from compliant/team players, and individual, organizational and societal impacts will be explored in this chapter. Figure 13.0 outlines the opposing traits of pro- and anti-whistle-blowers.



A pivotal aspect to these opposing forces occurs when a corrupt activity is discovered. For example, two people may have worked together for many years, are friends and share a lot in common. Yet they can be vehemently opposed in whether to tackle corruption or ignore it. This needs to be remembered by would-be whistle-blowers. You can’t necessarily trust your closest colleagues and friends to share your values or respect your anonymity.

13.1 Overview of whistle-blowing

(a) Definition

The term whistle-blower originated in the 19th century when enforcement officers whistled to alert the public or fellow police when a crime was being committed. It now refers to an individual identifying and calling out misconduct (including corruption), which impacts on the wellbeing of the community.

This augments the role of crime prevention and regulatory authorities in fighting corruption and is most useful in situations where illegal activities cannot be monitored by authorities through publicly accessible pathways.

(b) Famous whistle-blowers

Table 13.1(b) lists some famous whistle-blowers who have exposed corruption by their employer, a client or other entity to combat corruption.

Table 13.1(b): Examples of high profile whistle-blower cases

Year	Whistle-blower	Organization	Type of corruption
2001	Sherron Watkins	Enron	Reported accounting irregularities to US government authorities
2002	Cynthia Cooper	WorldCom	Led an audit team that uncovered a multi-billion dollar fraud
2008	Harry Markopolos	Bernard Madoff	Reported to the US Securities Exchange Commission in 2000, 2001 and 2005 that Madoff had falsified reports, after which Madoff was sentenced to 150 years' prison
2009	Bradley Birkenfeld	UBS – Switzerland	Disclosed possible tax evasion by UBS Group AG clients; UBS was subsequently fined \$780 million and ordered to release American tax evader information
2012	Vijay Pandhare	India – Maharashtra	Alerted government officials to alleged irregularities and cost inflation in irrigation projects, leading to the Maharashtra Irrigation Scam and the resignation of Maharashtra's deputy chief minister

In 2013, computer intelligence consultant, Edward Snowden, released highly classified information through the US National Security Agency (NSA) in a controversial whistle-blower case. Though it does not involve construction, the case still demonstrates the moral dilemmas that surround whistle-blowing. Conjecture exists as to whether he tried to disclose details of illegal activities by the NSA internally.

Snowden released classified information through a network of journalists, outlining illegal intelligence activities. He claimed the release of the information was in the interests of the public.

Snowden avoided prosecution in the US by escaping to Russia, where he continued to provide information to a network of journalists. Though he received widespread condemnation, in a famous rebuttal he stated that, “Being called a traitor by Dick Cheney is the highest honor you can give an American.” This complex paradox highlights the moral conviction of the whistle-blower, and potential legal consequences of whistle-blowing.

(c) Murdered whistle-blowers: India

Disturbingly, in some countries whistle-blowers are vulnerable to intimidation, or in extreme cases they have been murdered to prevent investigations of corrupt individuals and organizations. This practice is prevalent in India and has cast serious concerns over whistle-blower protection.



Figure 13.1(c): News headline on whistle-blower murder – Satyendra Dubey

Source: Neeraj Kumar, 'Unheard success story of Satyendra Dubey who was killed for raising his voice against corruption' [13.3]

Case study 13.1(c): India – Whistle-blower murdered

Neeraj Kumar
VTVIndia
October 9, 2020

Unheard success story of Satyendra Dubey who was killed for raising his voice against corruption

Satyendra Dubey was an Indian Engineering Services (IES) officer who lost his life while fighting corruption in the Golden Quadrilateral highway construction project. He was murdered on 27 November, 2003 in Gaya, Bihar on exposing large-scale flouting of NHAI rules regarding sub-contracting and quality control. Almost after six years of his death, the three accused of his murder were convicted by the Patna Court ...

Satyendra was sent to build the golden quadrilateral highway construction project. He was shocked to see that corruption was eating away such an important project and everyone seemed to be supporting the scam.

Tenders for development work worth crores of rupees was given to little contract based workers who were obviously unequipped for dealing with such vital tasks. On the head of this, they were delivered government finances much before the specified time. This conspicuous disrupting of guidelines astonished him and he began countering individuals in his own ability ... [13.3]

Exercise 13.1(c): Whistle-blower murder – Satyendra Dubey

(i) (t) (c) (r)

1. Refer to Case study 13.1(c) and list the various parties that were likely to have been implicated in the Golden Quadrilateral highways project, carried out by NHAI.
2. With reference to the list in Section 5.2, what does this case highlight about disclosing evidence of corruption?
3. Provide references to other sources used in your investigations.

(d) Anonymous/confidential whistle-blowers

Whistle-blowing, as we've shown, is clearly risky. It may involve potential for harm, strong-arm tactics or even death. However, individuals can expose corruption by providing physical evidence of wrongdoing, without exposing themselves.

In Table 13.1(d) we examine instances where a report, email, or other physical evidence has come into the whistle-blower's possession that has then been leaked through an intermediary to the media or enforcement authorities, without identifying confidential sources.

Table 13.1(d): Recent anonymous/confidential whistle-blower cases

Year	Organization	Type of corruption
2008	Unaoil	Tens of thousands of leaked emails reveal bribery of officials and influential businessmen for oil and gas rights in various nations
2016	Mossack Fonseca	The Panama Papers leak disclosed 11.5 million documents exposing illegal companies and trusts used for tax evasion and crime
2021	Alcogal Law Firm	The Pandora Papers disclosed 12 million documents that were leaked to the International Consortium of Investigative Journalists (ICIJ).

Importantly, anonymous/confidential reporting can only successfully occur when evidence of corruption is collected without the whistle-blower being caught or exposed through a process of elimination. Criminals can often work out through the timing of the data leak the identity of the whistle-blower. The measures used by criminals cannot be under-estimated and could include: phone tapping, break-in/burglary, bugging of home, car, and workplace, stalking, and computer hacking.

As a result of this, extreme care is needed when dealing with highly sensitive material.

(e) Types of evidence

If you set out to expose wrongdoers, obtaining sufficient evidence of corruption is vitally important. Table 13.3(e) outlines various sources of evidence. Whether evidence is admissible or not, depends on your jurisdiction's laws and how the information was obtained.

Exercise 13.1(d): Documents containing corruption evidence

(i) (t) (c) (e)

Someone in your company's IT department accidentally provides you with access clearance to the wrong file server, and the first file you open contains details of a serious crime. You check further and see that many of the files involve wide ranging criminal activities. There are thousands of files on the server. What do you do about it? Consider alternatives based on whether, (a) the company has high or low level data security, (b) if you are based in a developed country with good governance, or in a developing country where your safety may not be guaranteed.

Table 13.1(e): Types of evidence that can be obtained by whistle-blower

Sources	Details	Value
Hearsay	Hearing second or third hand from a source	Limited value, but could alert a superior or an enforcement agency on the need to investigate
Heard or seen	Directly hearing or seeing is helpful in pin-pointing corruption, but may lead to that person's word against mine; character assassination, defamation and slander laws, and organizational cover-ups make action difficult without proof	Of limited value, but is more focused and reliable as a source of information for a superior or enforcement agency
Emails	Can range from individual emails through to large scale data breaches with millions of emails and attachments	Very useful for tracing illegal activities, business structures and funds transfers
Other documents	Reports, site photos, test results, financial records, funds transfers, details of crimes	These can be very useful, provided they can be used without being blocked by authorities
Voice recordings	Includes taped conversations that are most likely obtained through covert action by the whistle-blower or a third party on behalf of the whistle-blower	May be inadmissible in certain jurisdictions, but valuable in demonstrating a problem to enforcement agencies
Video recordings	Includes videos that are most likely obtained through covert action by the whistle-blower or a third party on behalf of the whistle-blower	May be inadmissible in certain jurisdictions, but valuable in demonstrating a problem to enforcement agencies
Physical evidence	Materials, samples, cash reserves and other items that can be produced in a criminal proceeding	Most useful where a trail of ownership can be established

The legitimacy of information gathered to expose corruption varies depending on its origin and the laws of countries in relation to privacy of information. In instances where information cannot be used for legal proceedings, it may be sufficient for the media to name and shame the parties involved so they are forced to change for reputational reasons. In adopting this approach, be very sure of the veracity of your sources, to prevent the risk of defamation proceedings.

Exercise 13.1(e): Identifying falsified records

You observe that labels on concrete specimens taken from a construction site do not match samples being tested in a laboratory.

1. Explain the range of steps you might take to resolve the matter and the risks involved internally, and externally.
2. Consider the evidence required, how this could be obtained, reporting processes and the risks involved.

13.2 Reporting policy

Many organizations have a whistle-blower reporting policy (internal disclosure policy) that is expected to be followed by staff, based on employment contract terms. It is likely to include the following.

(a) Non-retaliation statement by employer

The employer makes an undertaking that they will not treat a whistle-blower in a manner that is detrimental and that would serve as a disincentive for the whistle-blower coming forward. It may include policies that: prevent termination, don't allow reassignment of role with lower prospects, don't limit prospects of promotion, and prohibit abuse of whistle-blowers whether physical or mental.

(b) Confidentiality statement

Includes a confidentiality statement or undertaking by the employer that states a level of protection of information provided by the whistle-blower, and may involve disclosure of the whistle-blower by law to complete a thorough investigation.

(c) Limitations

An employer may limit what they are prepared to do in a whistle-blowing situation. They may not guarantee immunity from any wrongdoing by the whistle-blower, and they may not provide compensation to a whistle-blower for time off to attend legal proceedings.

(d) Evidence

The company's whistle-blower policy may include requirements for attaining and verifying evidence that addresses:

- **Baseless allegations:** Care needs to be taken to prevent making allegations that can't be substantiated – this leads to a burden of proof being on the whistle-blower.
- **Lost evidence:** Getting physical evidence of corruption and holding onto it are two very different challenges. If someone is desperate, they may steal it back, withhold or confiscate the material in the workplace, or they may use legal channels where it is deemed that the material is confidential.
- **Disciplinary action:** Some organizations indicate that disciplinary action may be taken against anyone who makes a baseless allegation. (This tends to indicate a hostile attitude by an organization toward whistle-blowers, which may have a bearing on the integrity of the organization.)

(e) Reporting procedures

Reporting procedures need to be sufficient to explain the issue with details, and evidence of wrongdoing. This may include files, reports, photos, videos, and voice recordings. Recordings may not be legally admissible, but they may provide the organization with sufficient evidence of wrongdoing to take action to rectify the situation.

(f) Contact person for reporting

A contact person for reporting is likely to be an immediate superior, human resources director, head of an ethics committee, the CEO or in some cases a dedicated complaints manager or director.

Exercise 13.2(f): Reporting policy

(i) (t) (c) (e)

Consider each of the reporting policy items listed in Section 13.2 and how each of them may be structured for (a) an ethical organization, (b) a corrupt organization.

13.3 How to get help

It may seem obvious that employees follow procedures and report to their superior, the head of the ethics committee or to the person nominated as being responsible for whistle-blower complaints. The problem with this approach is knowing who to trust. Just because someone is in a position of trust, it does not make them automatically honest and trustworthy.

Every situation is different and there is no one-size-fits-all approach to identifying parties you can trust.

(a) Colleagues

Other employees of a similar age, who you may have studied with, and socialize with, can be a valuable resource for independent advice, or as a sounding board to assess your own decision making. In taking this approach you may have a greater chance of identifying a trustworthy person, but they may have limited knowledge (so discussing it with them may be of no benefit). There is also a risk they could leak details of the disclosure to others.

(b) Superiors

Your superior within an organization will typically (but not always) have more knowledge and experience than you, in dealing with a range of situations. This can be both positive and negative:

- **Positive:** if the supervisor is supportive of you having identified a corrupt activity and is willing to back you up in raising the issue at a higher level within the organization.
- **Negative:** if the supervisor is untrustworthy, does not want to have the matter dealt with, or is in some way complicit in the corrupt activities.

It is difficult to assess the integrity of others and as a result it is worth considering getting help from an anti-corruption organization or from a suitably experienced lawyer.

(c) Anti-corruption organizations

Various global organizations, including those with local branches and national organizations provide whistle-blowers with support (see Appendix A). However, it is important to note that some anti-corruption organizations may have been infiltrated by unethical/corrupt parties, so reporting may involve a degree of risk.

(d) Law firms (pro-bono support)

Many law firms provide a small portion of time for free (pro-bono) legal services as a part of their corporate and social responsibility. Supporting whistle-blowers is seen as an important social cause for the provision of legal services.

Speaking to a lawyer in a pro-bono capacity is beneficial where they are independent of the organization involved in corruption. An experienced lawyer can review your contract's terms to assess risks, and they can provide legal advice regarding releasing confidential information and judicial processes.

At this stage you will need to develop a strategy regarding how to best proceed. Figure 13.3(d) outlines the process and options that can be considered.

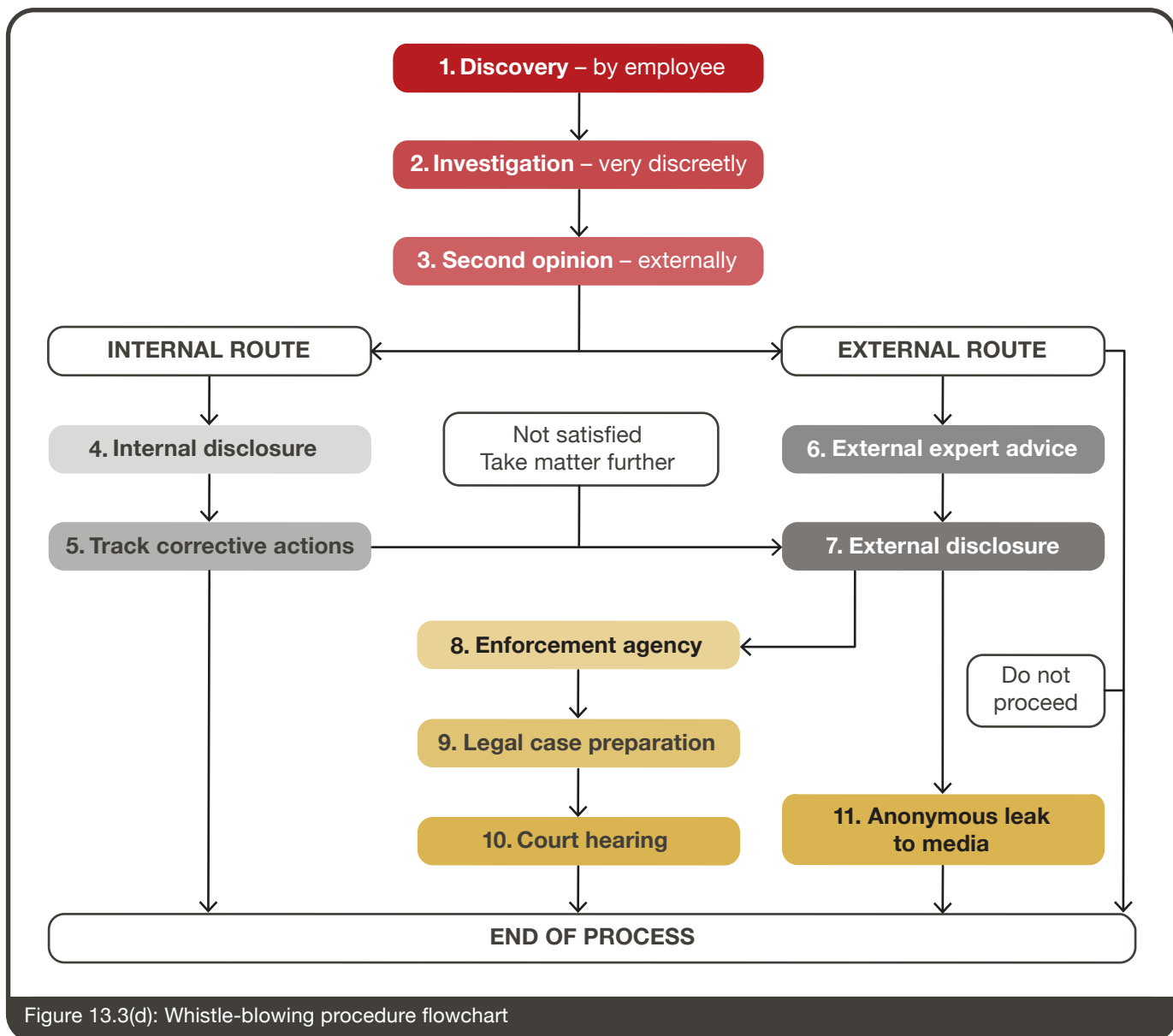


Figure 13.3(d): Whistle-blowing procedure flowchart

Each step in the flowchart is outlined in further detail in Table 13.3(d).

Table 13.3(d): Whistle-blower actions (11 steps)

Step number	Stage	Description
1	Discovery	Record facts of what is discovered as carefully as possible; include time, place, circumstances leading to discovery, and information uncovered.
2	Investigation	Check facts as far as possible and the reliability of the information – Was it hypothetical or real? – always remaining cognizant of confidentiality agreements.
3	Second opinion	Seek out a ‘very’ trusted mentor or associate to discuss in general terms only, avoid specifics that could lead to a coverup or disciplinary action, and if in doubt, get external legal advice.
4	Internal disclosure	Refer to procedures outlined in the organization’s code of conduct in relation to internal disclosure, and if none exists, refer matter to head of ethics committee or company director, but avoid reporting to a superior who may be implicated in corrupt activity.
5	Track corrective actions	Seek feedback from the ethics committee or director, to verify concerns have been adequately addressed (ie, actions have been taken in relation to persons, processes, and restitution for financial advantage).
6	External expert advice	<p>If the organization fails to act, covers up/conceals corrupt activities, or seeks to intimidate or use coercion against the whistle-blower, seek external expert advice.</p> <p>Legally privileged advice can be provided by lawyers often in a pro-bono capacity (refer to Transparency International and other whistle-blower support organizations for recommendations).</p> <p>IMPORTANT: A non-disclosure agreement (NDA) is often contained in employment contracts to prevent employees from releasing confidential information. Legal advice is needed to assess the implications of an NDA before making an external disclosure.</p>
7	External disclosure	<p>The disclosure may be through a state or federal enforcement agency, and they may need to carry out further investigations to build a sufficient body of evidence to prosecute.</p> <p>If the evidence is sufficient, but there are jurisdictional constraints, or where the enforcement agency is slow or potentially corrupt, an alternative pathway may be required. In these circumstances reporting to media may be more effective.</p>
8	Enforcement agency	Irrespective of the method of external disclosure, if a criminal activity has occurred, then an enforcement agency will need to get all available evidence from the whistle-blower. If the matter hasn’t been made public the enforcement agency may require covert investigations.

Table 13.3(d): Whistle-blower actions (11 steps) (cont...)

Step number	Stage	Description
9	Legal case preparation	Legal case preparation can be a drawn out process, and the whistle-blower can be subjected to significant hardships such as: loss of employment, family pressure, intimidation, and mental anxiety/stress. These issues should be discussed well in advance with an expert in the field of whistle-blowing, Transparency International or a whistle-blower support group.
10	Court hearings	Cross-examinations can be stressful, where attempts will be made to discredit the whistle-blower through intimidation, digging up dirty secrets, implicating the whistle-blower in the organization's corrupt activities, threatening legal action due to breach of confidentiality and other tactics. Discuss and prepare for these well in advance of a court hearing.
11	Anonymous leak to media	If the external disclosure is to media, it is important to identify a highly respected investigative journalist as a point of contact. Maintain anonymity for initial contact or throughout the external disclosure process if necessary. Note that evidence and context will need to be provided.

13.4 Internal disclosure

If you or a colleague plan to take the internal disclosure path, you need to be aware, this is not a straightforward exercise. It involves a multitude of risks and responses that can stifle the intended process of an honest internal disclosure. There are excellent online resources available such as Transparency International's 'Internal Whistleblowing Systems: Best practice principles for public and private organisations' [13.4].

(a) Benefits

Taking the internal disclosure path can provide benefits for the organization and individuals, compared to a matter becoming public. These include:

- the ability to address problems quickly, to minimize their impact (this is particularly important during construction for instance to minimize the extent of defective works)
- the impact of corrupt activities can be reduced through reparations, returning of goods and cancelling of contracts

- the anonymity of the whistle-blower is more easily achieved than if an external disclosure was made
- confidentiality of the incident can be maintained to minimize delays on a project and to prevent brand damage
- the cost and time required for a criminal investigation and a possible court case can be avoided
- disciplinary measures can be chosen by the organization, rather than being forced onto the organization based on a judicial process.

In instances where corrupt activities have been raised by a whistle-blower it is preferable for an organization to self-regulate and rectify issues themselves.

(b) Risks

If you decide to internally disclose, you need to be aware of certain risks. Ask yourself:

- Will there be severe consequences for raising an issue?

- Can my (or the whistle-blower's) anonymity be guaranteed?
- Could the organization's whistle-blower policy be a smokescreen?
- Could the person I'm reporting to be complicit in the corruption?
- Is there a chance that I (or my colleague) have got it wrong?
- What if the implicated parties threaten the whistle-blower and their family?
- Might my (or my colleague's) role in the organization be compromised as we are seen as a 'snitch'?
- Could an internal disclosure result in a cover up preventing an investigation?

13.5 External disclosure

If the internal disclosure pathway is unviable, then an external disclosure pathway needs to be considered with its inherent risks. These are outlined in a U4 Brief No 24, 'Making Whistleblower Protection Work: Elements of an effective approach' [13.5], and UNODC's 'Whistleblower Protection: International experiences, global initiatives and key concepts' [13.6].

Two options are available for making an external disclosure, either to an enforcement agency or to investigative journalists. Table 13.5 lays out the advantages and disadvantages of each option.

Table 13.5: Whistle-blower disclosure to enforcement agency versus journalist

	Enforcement agency	Journalist
Trust	Difficult where individuals and the representatives of the agency are unknown, or in a country with a high level of corruption in law enforcement.	Leading national investigative journalists get leads on stories due to their integrity. Where possible make anonymous high level contact.
Implicated	The whistle-blower may become the person facing criminal action, particularly if they were involved or broke laws to produce evidence.	Evidence of corruption can be released on a confidential basis with the whistle-blower remaining anonymous.
Ability to act	Has the ability to carry out surveillance operations and gain access to otherwise confidential information. Then use this to build a case.	Limited to public awareness through media channels only, but this is highly visible and able to cross jurisdictional boundaries.
Discretion	Typically, very discrete in situations where the law enforcement agency can be trusted.	Good investigative journalists provide full anonymity and only release material once they have received the whistle-blower's go ahead.
Effectiveness	A case can be made without necessarily relying on the initial information provided by the whistle-blower. This is a significant advantage if the whistle-blower wants to remain anonymous.	Very effective in raising high level awareness, but of limited assistance in pursuing criminal proceedings against wrongdoers.
Protection	Able to provide protection in the form of security for whistle-blower and family, alternative accommodation or in extreme situations, witness protection.	Would typically need to be provided after consultation with law enforcement agency.

(a) Investigative journalists

Some leading investigative journalists specialize in exposing corruption, and they play a vital role in whistle-blowing. They can be helpful particularly if reporting within the organization cannot be trusted; or if corruption of enforcement agencies is a major concern. They're also a good option in cases that involve multiple jurisdictions (international cases); when anonymity is vital for personal and family safety; or in situations where other reporting pathways are very slow or blocked.

When it comes to external disclosure, this typically involves covertly sending information to an investigative journalist. Even if you or a colleague were to do this anonymously, an employer can investigate files, emails, access sensitive information, interview staff, and undertake covert activities, including tapping phones and scanning computers.

The safety and security of individual journalists can also be threatened. As a result, organizations such as the International Consortium of Investigative Journalists (ICIJ) provide individual journalists with some protection afforded by divesting corruption investigations, such as occurred in the disclosure of the Panama Papers across over 400 journalists and media organizations around the world.

(b) Authorities/enforcement agencies

Anti-corruption authorities, unlike the media are focused on law enforcement rather than on the public exposure of corruption and wrong doers. As a result, they focus on: the laws that have been broken; whether there are jurisdictional limitations; what evidence is available; the seriousness of the case; witness protection complexities; if the case is within their core competencies; the chance of successfully prosecuting a case; and whether more pressing cases exist.

They may also be influenced by political factors and priorities. Information leaks from enforcement agencies may include the identification of whistle-blowers and other witnesses, who may then be subject to intimidation.

Before you (or a colleague) decide to disclose information to an enforcement agency you must seek legal advice in relation to confidentiality obligations and in recognition of the ramifications of such a disclosure. These may include:

- exposure to criminal charges brought by the enforcement agency for any involvement
- exposure to criminal charges brought by the employer for a breach of confidentiality
- risks from corrupt elements from within the enforcement agency
- threats of harm to self or family
- loss of job and an attack on credibility that makes the whistle-blower unemployable
- involvement in a drawn out criminal investigation and court proceedings.

It is also important to note jurisdictional boundaries between enforcement agencies. While they may cooperate between states and internationally, they may refrain from acting where they believe the whistle-blower's safety in releasing information to a foreign enforcement agency is at risk.

(c) Confidentiality

Prior to any external disclosure it is important to seek legal advice regarding the ramifications of any disclosure. This is particularly important where providing this information is likely to involve a breach of confidentiality, as outlined in the whistle-blower's employment contract.

Example: Confidentiality clause

For the purposes of this clause ‘Confidential Information’ shall mean any information concerning the Company and its Business, or the Shareholders and their businesses or Controllers and Related Bodies Corporate of the Company, including proprietary information, profit and loss accounts, balance sheets, financial position and performance, profit projection and earnings, accounting records, client lists and information and all other information that ought reasonably be considered confidential whether written or oral and whether or not it is designated as confidential except:

- Where such information may be or becomes information in the public domain other than as a result of a breach of this clause.
- The recipient of such information established that such information was already known to it at the time of disclosure.
- As may be required to be disclosed pursuant to the lawful requirements of any government, administrative body, authority, or department.
- As may be required to be disclosed to any Court in the event of legal action by or against any Employee including for the purpose of asserting or attempting to enforce any rights or defending any action in connection with this Agreement.

The Employee acknowledge that the disclosure of Confidential Information coming into its knowledge, possession or control concerning the Company or its business may damage the Company as a result the Employee shall not disclose such Confidential Information.

The provisions of this clause shall survive termination of this Agreement.

Exercise 13.5(c): Disclosure of confidential information

(i) (t) (c) (e) (d)

Refer to the sample Confidentiality Clause listed above with the Table 6.1(b) Comparison of anti-corruption laws. Is it permissible to breach the confidentiality agreement for (a) bribery of a foreign government official, (b) bribery involving two private entities, in the US, UK or Australia?

(d) Reluctance to be a whistle-blower

The laws protecting whistle-blowers are continually evolving and need to be considered with respect to the following: the integrity of enforcement agencies, the risks of harm to self and family, the level of protection that is provided, and the likelihood of successful prosecution. This creates a moral dilemma in reporting corruption highlighted in Figure 13.5(d).

If you decide to internally disclose, you need to be aware of certain risks:

- Employment with the same organization may no longer be possible and the employer may block other pathways to employment.
- Intimidation of whistle-blowers and their families is very common, particularly in small communities.
- Whistle-blowing with associated isolation and intimidation creates a high level of mental stress that can effect work and family life.
- Courts are notorious for delays, particularly when the opposing side will look to delay or avoid a trial at all costs, this adds to the stressfulness of the situation.



- Going after the whistle-blower is a common tactic that involves either taking legal action for some involvement in an illegal activity, or a breach of contract in relation to the handling of confidential information.
- Along with all the sacrifices of being a whistle-blower there is always a risk that the prosecution may be unsuccessful.

If you (or a colleague) are likely to be in this situation, it is worth reading Cynthia Cooper's *Extraordinary Circumstances: The journey of a corporate whistle-blower* to get a sense of these issues [13.1].

CONCLUSION

In this chapter, we looked at characteristics of whistle-blowers, the challenges they face, the risks and sacrifices they make and their moral conviction. We then examined information gathering and the importance of getting legal advice. We explored internal and external disclosure pathways, with a focus on individual whistle-blower initiatives. In the next chapter, we look at a range of international strategies to address corruption from a regulatory perspective.

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