

Non-Executive Directors – Make 2023 the year for Speaking Up



This year marks 25 years of whistleblowing law in the UK and the profile of whistleblowing has never been higher. Non-Executive Directors will rightly want to know how their organisation listens to and acts on whistleblowing concerns.

Whistleblowing is a vital risk management tool – staff are the best early warning system for identifying wrongdoing or malpractice. ‘Speaking up’ can stop harm to finances, reputations, lives and livelihoods so should be high on the Board agenda.

Indeed, the UK Corporate Governance Code recommends that Boards should assess and monitor culture, and that staff should be able to raise any matters of concern. But how can NEDs assess whether their organisation is fostering a responsible ‘speaking up’ culture? What are the key questions NEDs should be asking?

1 How do we know our whistleblowing arrangements are working?

Having a policy in place is just the start. NEDs should check that there are multiple channels for staff to raise concerns, and that the organisation tests staff awareness and confidence in using those channels.

Ask for feedback from whistleblowers who have raised concerns, and what lessons have been learnt from concerns that have been upheld. The UK’s leading whistleblowing charity and support organisation, **Protect**, has developed a [Whistleblowing Benchmark](#) to help organisations test their governance, engagement and operations against best practice and this month has launched a new [Whistleblowing Scanner](#) for small to medium sized organisations.

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2 What is the data telling us?

The number of recorded whistleblowing concerns is important, but not sufficient, information. Few reports may mean concerns are being addressed by line managers effectively, or it may indicate a culture of fear. Conversely large numbers may result from an effective communication campaign about speaking up, rather than indicating new risks.

So, NEDs need to dig beneath the headlines and ask - what are the trends and the areas in which concerns are raised? Do our staff have confidence to raise concerns openly or confidentially across all departments, or are there areas where concerns are only raised anonymously, making investigation and follow up more difficult? Are there key risks to the organisation that have been identified by customers or suppliers, but which should have been raised by staff? If so, were staff not speaking up, or were their concerns ignored?

3 What do we have in place to prevent whistleblower victimisation?

Stating that your organisation has a zero-tolerance approach to whistleblower victimisation is important, as is a commitment to taking disciplinary action against perpetrators: it is unlawful to subject a worker to any detrimental treatment or to dismiss an employee for whistleblowing.

Many organisations are developing risk-assessments with whistleblowers – working with those raising concerns to consider how to pro-actively prevent harm. Have any whistleblowers using your processes complained of detrimental treatment? Are they still working for you? Protect has produced a [practical guide for employers to prevent victimisation](#).

4 What is the role of the Board in promoting a safe culture?

Many Boards appoint a whistleblowing lead to oversee the effectiveness of whistleblowing arrangements, and in the financial services sector, the “whistleblowing champion” is a must-have for FCA or PRA regulated firms. Board communications with staff and the “tone from the top” are key. A personal endorsement that it is every worker’s duty to speak up to stop harm and that the organisation encourages and protects responsible whistleblowers will have much more impact than an email sent from “HR”.

Some NEDs may be identified in a whistleblowing policy as the last internal port of call for whistleblowers, and should be trained to be good recipients of bad news. Directors can be held personally liable for their own treatment of whistleblowers as the case of [Timis v Osipov](#) showed. Two NEDs were found to be personally liable for the decision to dismiss Mr Osipov from his CEO role, and had to compensate him around £2 million.

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5 How would your organisation respond to a NED raising a concern?

Despite the duties and liabilities that fall on NEDs, and the possibility that NEDs may become aware of public interest wrongdoing, NEDs do not currently have protection under whistleblowing law as they are not “workers”.

Protect is campaigning to update UK whistleblowing law to ensure all those in the workplace are protected, including NEDs and charity trustees. In the meantime, good whistleblowing policies should offer assurances to all those who work with or for an organisation that their speaking up is valued and that they will be protected.

NEDs may come across wrongdoing by a senior executive, identify governance failures or be the recipients of others’ concerns: they should have confidence that they can raise concerns without risk of losing their roles or being treated badly. If you are unsure whether or how to raise a concern, contact Protect’s [free confidential legal advice line](#).

Want to find out more? **On 24 May 2023** Protect is offering a two-hour masterclass: “*Encouraging Whistleblowing as a Trustee, NED or Governor*” - and are delighted to be joined by NEDA CEO Louis Cooper. For details and booking online [here](#).

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About Protect

Protect aims to make whistleblowing work for individuals, organisations and society. Every year, the organisation supports around 2,500 whistleblowers who call Protect’s free confidential legal Advice Line. In addition, Protect works with organisations on improving their ‘speak up’ arrangements and campaigns for better legal protection of whistleblowers. Protect services include confidential advice for individuals; training, consultancy and membership for employers.
