

# Are Concerns About the UK's New Whistleblower Rules Misplaced?

By Andrew Foose, J.D. Vice President, Advisory Services, NAVEX Global

In early April, the UK's Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) began rolling out [new whistleblower rules](#), with which financial organisations will be required to comply. These rules have not been universally welcomed, however.

Indeed, [according to the FCA's Policy Statement](#), feedback from financial industry insiders included several concerns over the new rules. Here, we share our thoughts on a few of the key concerns and, based on our experience working with thousands of companies around the globe, offer guidance for whistleblower hotline success.

## Concern #1: Additional Burden on Business

Some financial firms feel the new rules are just another bureaucratic requirement that, along with other UK and European regulatory requirements, is a hindrance to doing business efficiently. Given that firms already offer other ways to raise concerns, they believe the requirement [to establish](#) a whistleblower hotline and have a "whistleblower's champion" is unnecessary and overly prescriptive.

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### OUR TAKE: HOTLINES ARE A CRITICAL "SAFETY VALVE"

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The vast majority of employee concerns and allegations of wrongdoing will, indeed, be raised through channels other than a hotline. Data from our 2016 Hotline Benchmark Report which pooled information from more than 2,300 organisations representing 34 million employees [indicate that in 2015](#), the median number of issues raised through hotlines was 1.3 per 100 employees.

While this number may seem low, it indicates that some employees—even with other reporting channels available to them—are uncomfortable using standard reporting options. Hotlines thus represent a crucial outlet for those individuals who have knowledge of potential violations but are wary of speaking to their manager, HR, or others.

Organisations that want to prevent violations of law and policy and that recognise the commercial value of their reputations strive to create a "speak up" culture in which raising concerns is encouraged. Offering a hotline is essential to ensuring that all employees—including those who fear reprisal—have an outlet to alert the organisation to issues that could result in investigations, lawsuits, reputational damage and loss of high-value talent. If the organisation doesn't know about wrongdoing, it can't correct it before it becomes a fiasco.

In the United States, the government offers whistleblowers who report violations to certain federal agencies the potential to earn multimillion-dollar “bounties.” The FCA has expressly rejected this approach, choosing instead to encourage internal reporting. The new rules thus are an effort to ensure employees have a real opportunity to raise concerns internally. The requirement of appointing a “champion,” tasked with setting up an appropriate set of mechanisms, is a further effort to ensure that firms do more than pay lip service to the requirements.

Our work with organisations, large and small, who value learning about potential problems as early as possible, suggests that if firms embrace the new rules and leverage them as a way to reinforce a culture of integrity, they will reap benefits well in excess of the costs of the programme.

### RECOMMENDATIONS:

- [Offer both toll-free telephone and website](#) options so that employees can raise issues at any time, in a method that is convenient for them.
- Publicise the hotline and website—frequently and in a variety of forms. Make it easy for employees to speak up when the need arises.
- Educate your employees about how the process works once they use the hotline. If they don’t know what will happen next, they may be reluctant to speak up.
- Forbid reprisals against those who speak up in good faith—and then punish those who do retaliate. Failure to protect whistleblowers indicates that the organisation is not, in fact, serious about wanting employees to speak up.

## Concern #2: Anonymous Reporting Encourages False Accusations

Some managers and leaders worry that allowing employees to raise concerns anonymously will provide an avenue for false, malicious or vexatious frivolous allegations.

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### OUR TAKE: THE VALUE OF ANONYMITY OUTWEIGHS THE RISK OF MISUSE

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While it is undeniable some employees may see the whistleblower hotline as an opportunity to lie about co-worker or manager behavior, the reality is that very few do. Far more typical are employees who do not have all the facts, misunderstand what has happened, or raise issues based on secondhand information. Furthermore, the ability to anonymously accuse someone of wrongdoing is not new—employees already can send anonymous letters to senior management or the board and can leave voice mail using a phone other than their own, for example.

On the other hand, for employees who fear reprisal, anonymity may be the only thing that allows them to feel [safe enough to alert the organisation](#) of potential wrongdoing. Indeed, we know from speaking with thousands of employees in focus groups that the top two reasons employees give for not reporting concerns are fear of reprisal and a distrust that the employer will act on the report. A financial institution should want desperately to learn of embezzlement, money laundering, misstatement of financial results or other violations. It would be a terrible shame if they were denied such knowledge because an employee was too scared to speak up.

The biggest challenge with anonymous reporting, in our view, is that it can be very hard for the organisation to follow up on the report if the report does not provide sufficient information. Since the organisation does not know who made the report, it cannot reach out to him/her.

## RECOMMENDATIONS:

- Allow employees to report anonymously. At the same time, educate them on the value of providing their name (which allows the organisation to more thoroughly investigate the concern).
- Use call-back codes or special user IDs to allow anonymous reporters to call back or re-enter the system to get questions or follow-up messages from investigators—and encourage them to check back in.
- Train investigators to view each allegation neutrally and not to assume that it is true (or false). False accusations will be revealed through a lack of evidence.

## Concern #3: Lack of Board Insight

The regulations require a single individual to be responsible for the “whistleblowers’ champion” role—unlike other UK policy codes (including the UK’s Corporate Governance Code), which places ultimate responsibility at the board level. Some commentators argue that this creates a risk that boards and senior managers may pay less attention to the issues that arise.

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### OUR TAKE: BOARDS DON’T NEED A GOVERNMENT MANDATE TO TAKE WHISTLEBLOWING SERIOUSLY

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Boards that care about shareholder value, company reputation and integrity will exercise oversight over whistleblowing even without the mandate in the new rules. They will ensure that the “whistleblower’s champion” has sufficient authority and resources to be effective. Boards that embrace making money by violating the law and cheating, conversely, are unlikely to be moved by a mandate to oversee whistleblowing, and instead likely will pay only lip service to it.

Also, the Corporate Governance Code puts the onus of oversight on boards and nothing in the new whistleblower rules prevents boards from exercising such oversight.

## RECOMMENDATIONS:

- Help boards understand the value of encouraging employees to speak up and how a strong culture of integrity enhances the corporate reputation/brand, helps attract and retain the best talent, and, as an increasing number of studies has shown, often results in superior financial performance and company valuations.
- Equip boards with a list of questions they should be asking the Chief Ethics and Compliance Officer (or equivalent role) to ensure the organisation is aware of and mitigating legal and reputational risks. Among these will be questions about the effectiveness of the whistleblower’s champion and the hotline mechanisms.

## Concern #4: Requirements for Reports to the Board Were Too Vague

Some commentators feel the requirements to report to the board on the whistleblower programme were insufficiently prescriptive. In the worst case, some feared that confidential details, including the names of whistleblowers, might be revealed, exposing the whistleblowers to reprisal.

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### OUR TAKE: EXAMPLES OF GOOD PRACTICE MIGHT HAVE BEEN HELPFUL, BUT AVOIDING DETAILED PRESCRIPTIONS PROBABLY WAS WISE

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Organisations, including financial institutions, vary greatly. Specific reporting requirements likely would not have fit with some boards' needs, and would have required unnecessary work. Allowing firms and their boards to determine what information is most valuable to them avoids this potential pitfall.

That said, providing guidance to firms that have not previously reported on whistleblower programmes would have been useful.

### RECOMMENDATIONS:

- Ask your board what information they want in order to understand whether the programme is sufficiently robust and effective.
- Talk to peer institutions about what they find useful to share. This is one area where cooperation between competitors is a good thing!
- Benchmark your [data against other organisations](#) of similar size and/or industry.

## Conclusion

While the new whistleblower regulations are being rolled out over the next five months, it will take much longer to determine the extent to which concerns about the whistleblower rules are valid—and whether or not firms will embrace the benefits of encouraging employees to warn them of potential problems. Those that discount the value of integrity are likely to find themselves at a competitive disadvantage.

To learn more about how NAVEX Global's whistleblower hotlines, incident management systems and other software tools and expertise can help your organisation meet UK whistleblower requirements, contact us at [info@navexglobal.com](mailto:info@navexglobal.com), or give us a call at +44 (0) 20 8939 1650 (EMEA + APAC) or +1 (866) 297 0224 (AMERICAS).

## ADDITIONAL RESOURCES

- [Key Elements for Effective Compliance Program Board Reporting](#)
- [Benchmarking Your Compliance Programmes in EMEA & APAC](#)
- [Global Anti-Harassment & Bullying Sample Policy](#)

## RELATED NAVEX GLOBAL SOLUTIONS

- [Whistleblower Hotline Solutions](#)
- [Incident Management Solutions](#)
- [Compliance Training Solutions](#)

## ABOUT THE AUTHORS

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Andrew Foose, J.D., vice president of NAVEX Global's Advisory Services team, is a former senior trial attorney in the US Department of Justice's Civil Rights Division. Andy is recognised among the country's leading experts on conducting lawful and effective internal investigations and has trained thousands of attorneys, compliance officers, auditors and human resource professionals on best-practice investigative techniques and on how to write effective, comprehensive investigative reports. He currently works with organisations ranging from large multi-national companies to smaller non-profits to assess their ethics and compliance programs and to provide guidance on ways to enhance program effectiveness and efficiency.

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NAVEX Global's comprehensive suite of ethics and compliance software, content and services helps organisations protect their people, reputation and bottom line. Trusted by 95 of the FORTUNE 100 and more than 12,500 clients, our solutions are informed by the largest ethics and compliance community in the world.