

WHISTLEBLOWING

**Anti-Bribery Guidance
Chapter 16**

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

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Editorial:

Editor: Peter van Veen
Editorial staff: Alice Shone, Rory Donaldson
Content author: Peter Wilkinson
Project manager: Rory Donaldson
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Transparency International UK's Global Anti-Bribery Guidance

Best practice for companies operating internationally

This is a guidance section from Transparency International UK's Global Anti-Bribery Guidance. The full guidance is available at www.antibriberyguidance.org.

About the Guidance

This flagship guidance presents anti-bribery and corruption best practice for companies, drawing upon expertise from over 120 leading compliance and legal practitioners and Transparency International's extensive global experience.

This free-to-use online portal expands and updates all of TI-UK's Business Integrity guidance over the last decade. This includes our original Adequate Procedures Guidance to the UK Bribery Act; a leading resource for compliance and legal professionals, which has been downloaded over 45,000 times from TI-UK's website. The guidance has been kindly supported by FTI Consulting and DLA Piper.

For each area of practice, we provide a summary, best practice tips, full guidance, and links to further resources. This is a dynamic resource and we will continue to update it with new content and features. If you have anything you would like further guidance on, or other suggestions, please do contact us at businessintegrity@transparency.org.uk

Many companies are facing increased bribery risks as they continue to expand internationally and become increasingly reliant on diffuse supply chains and complex third-party networks. There are also additional risks around stakeholder expectations, a global strengthening of anti-bribery legislation – requiring better internal mechanisms to ensure compliance – and enhanced enforcement.

Companies will always design their own bribery programme according to their particular circumstances but those following this guidance can take reasonable assurance that they are well positioned to counter risks of bribery, comply with anti-bribery legislation in jurisdictions across the world and to act ethically and positively in the markets in which they operate.

Transparency International UK's Business Integrity Programme

The goal of our Business Integrity Programme is to raise anti-corruption standards in the private sector. We aim to ensure that individuals and organisations do not participate in, enable or endorse corruption. Our approach is to engage positively with the private sector, governments and leading anti-corruption initiatives to identify and advocate best practice.

For more information, please visit <http://www.transparency.org.uk/our-work/business-integrity/business-integrity-forum/>

QUICK READ

Speak up and advice channels are for employees and others to seek advice and raise concerns about issues, including bribery. Speaking up or, as it is sometimes called, whistleblowing, has brought to light many significant bribery cases.

Advice channels allow employees to clarify policies, and receive guidance about how to handle sensitive situations. Such channels are most effective when there is a strong corporate culture of integrity so that employees trust that requests for advice or speaking up will be handled promptly, thoroughly and fairly. Advice can be given in many ways and the company should explore and develop an integrated range of routes by which employees can receive support.

Key elements of best practice

- **Open culture:** Build a culture of trust so that employees feel able to seek guidance or discuss issues with their managers or the relevant support functions and are confident to use speak up channels if they feel this is necessary.
- **Provide a range of channels:** Create a range of ways for employees to seek guidance. In addition to a hotline, companies should encourage discussions with line managers, or encourage management to have an open door policy. Opportunities to meet with compliance officers, personnel managers or relevant networks of employees should also be created.
- **Proper treatment:** Ensure that those who speak up are not harassed or penalised, but recognised or rewarded for their efforts.
- **Promptness:** Deal with matters raised promptly. Check case closure times as delays can weaken employees' trust in the process and the company's commitment to integrity. Delays may also have legal consequences.
- **Complete the process:** Ensure that every case follows the relevant process through to conclusion and that the employee is thanked for their commitment to upholding standards in using the channel. If possible employees should be asked to comment on their satisfaction with the process, although it should be noted that not every case will reach an outcome sought by an employee.
- **Analyse:** Monitor and analyse the use of advice and speak up channels as they can provide early warning signs, such as that the bribery programme may need attention. Capture data from all channels used to seek advice including discussions with management, compliance, HR and other functions.

BEST PRACTICE

- **Open culture:** Build a culture of trust so that employees feel able to seek guidance or discuss issues with their managers or the relevant support functions and are confident to use speak up channels if they feel this is necessary.
- **Consider an external provider:** Decide whether greater confidence will be provided to employees and third parties if a speak up channel is provided internally or managed by an independent provider.
- **Human resources is a key player:** Involve the human resources function in all aspects of development, design, monitoring and improvement of the advice and speak up channels.
- **Provide a range of channels:** Create a range of ways for employees to seek guidance. In addition to a hotline, companies should encourage discussions with line managers, or encourage management to have an open door policy. Opportunities to meet with compliance officers, personnel managers or relevant networks of employees should also be created.
- **Communicate:** Explain how to use the speak up channel, what feedback will be received, how confidentiality is safeguarded, and how the employee will be protected. This can be done through the training programme, for example.
- **Make the advice channels resources of choice:** Positioning and designing the advice line as a resource can increase its use and will help avoid employee error, misjudgement or improper conduct.
- **Promptness:** Deal with matters raised promptly. Check case closure times as delays can weaken employees' trust in the process and the company's commitment to integrity. Delays may also have legal consequences.
- **Complete the process:** Ensure that every case follows the relevant process through to conclusion and that the employee is thanked for their commitment to upholding standards in using the channel. If possible employees should be asked to comment on their satisfaction with the process, although it should be noted that not every case will reach an outcome sought by an employee.
- **Act on concerns:** Inform senior management promptly about speak up cases where they are well founded and of high significance.
- **Proper treatment:** Ensure that those who speak up are not harassed or penalised, but recognised or rewarded for their efforts.
- **Independent review:** Review the effectiveness of the channels whilst ensuring users' identities are protected.
- **Analyse:** Monitor and analyse the use of advice and speak up channels as they can provide early warning signs, such as that the bribery programme may need attention. Capture data from all channels used to seek advice including discussions with management, compliance, HR and other functions.

- **Ensure review by leadership:** Report critical issues promptly to senior management and provide regular reports to senior management and the board on the use of the channels including any implications.
- **Report publicly:** Let stakeholders know that your company operates with an open integrity culture, and that the company is trusted by, and trusts, employees. Reporting should detail how employees and others are encouraged to seek advice, raise concerns or blow the whistle. Report regularly and openly both internally and externally on the use, adequacy and effectiveness of the advice and speak up channels including information on the procedures, topics raised, handling and outcomes.

GUIDANCE

16.1 Introduction

Advice and 'whistleblowing' or 'speak up' channels are one of the routes by which employees and others can seek advice and feel able to raise concerns about issues including bribery. Whistleblowing is the term for when an employee or other person sounds an alarm to reveal knowledge or suspicion of wrongdoing or negligence within a company's activities. The employee may also be raising concerns about one of the company's third parties whose activities may negatively impact on the reputation of the company. Note that as 'whistleblowing' is a pejorative term in many cultures, the term 'speak up' is preferred, as this also better conveys what staff are expected to do when confronted by concerning issues.

Speak up channels are important; those who use them have revealed significant corporate bribery and other corruption. Employees should be aware that it is their duty to report any concerns they may have to senior management about contraventions of the anti-bribery programme. The contract of employment may make this a formal requirement however, its application will be subject to the legal and cultural context. The company should aim to ensure that the advice and speak up channels support the communication and implementation of the anti-bribery programme and form a positive component of the way the company respects and builds the trust of its employees.

16.2 Openness and trust

Advice and speak up channels succeed when there is a corporate culture of openness and trust and people feel able to seek advice and clarifications or to raise concerns without fear of retaliation. Openness means providing accessible channels and encouraging employees to use them and management being willing to respond to requests for advice. It also requires those dealing with requests to act with genuine commitment and ensure that action will be taken and carried through to conclusion. Not every use of the channel will necessarily be appropriate (for instance it might be a personal grievance) and not every review will result in an outcome that validates the allegation or concern, but it is important for building trust that concerns are engaged with and not dismissed early on.

Building trust in the channels will be supported by the tone from the top and positive behaviour from all management. This means:

- A willingness to engage with employees on sometimes complex and difficult topics.
- Building a track record built over time of a genuine commitment to the thorough treatment of requests for advice and speak up reports.
- Ensuring that those who speak up are not harassed or penalised, but recognised or rewarded for their efforts.
- Employees have positive attitudes based on their experience of using the channels.

- Leadership review of the use of hotlines, how effective they are, the attitudes of users and the outcomes. This acts as a check that the procedures are working and also allows the leadership to understand the nature of the requests and concerns being raised.

Further, trust should be built by the company having a clear policy for advice and speaking up underpinned by a commitment that no employee will be penalised for speaking up. The policy and procedures for use of channels should be communicated and promoted within the company and appropriate training given to employees and management.

Finally there is still a risk that employees view whistleblowing or speaking up negatively; as informing on colleagues, particularly in societies where informing on others is or was encouraged by repressive political regimes. Emphasising the help or advice aspect can create more favourable image in areas or sectors where these perceptions may be prevalent.

16.3 Provide a range of channels

Employees should be offered and encouraged to use a range of routes to seek advice and discuss issues. Apart from hotlines, other channels can also be effective and may include:

- Going to immediate line management.
- Direct access ('leapfrog') to higher management.
- Open door schemes for employees to voice concerns with management.
- Advice from trusted people such as an ethics or compliance officer, a trusted employee or union or an equivalent representative body.

The company can also establish an advice or support network which can present a human face as opposed to a formal hotline or management channel. For example, GSK has established a network of regionally based anti-bribery and corruption specialists who spend a significant amount of their time in its markets, speaking to people, delivering training and conducting reviews with a cross section of senior management. They handle significant numbers of queries each year which range from straightforward questions to intricate inquiries.

16.4 Effectively manage speak up and advice channels

Trust in speak up and advice channels is built through the confidence employees have in the function that manages the channels. Responsibility can be assigned to an independent function, such as a compliance or ethics officer, who reports on the management of channels to senior management. Reviews of the use of the channels and decisions made should be carried out (with appropriate controls implemented to protect identities of those using the channels). The reviews will serve to check the quality and effectiveness of the use of channels, and protect the interests of users by making sure that systems are not open to abuse.

Speak up channels can be run in-house but a company may judge that employees would have greater confidence in the channel if it was provided by an independent professional firm. Whatever the

assignment of responsibility, it must be ensured that the speak up and advice hotline conforms to the relevant policies of respect for the individual and data security and privacy.

The use of channels should be documented and a records retention policy applied for the period which documents are to be held. Documentation is important for several reasons:

- Providing a trail in the event of an audit, investigation or a further action by the employee.
- Recording timelines.
- Allowing analysis for improvement of the advice and speak up channels.
- Providing information for reviews by management and the board.
- Providing data for use in public reporting.

16.5 Importance of advice channels

Advice channels form part of the range of internal communication methods available to the company. Formal communications such as, the company's code of conduct, guidance handbook and detailed procedures cannot anticipate every situation or question; the implementation of an advice channel fills the gap by giving specific interpretation and advice. Countering bribery includes complex areas such as how to handle gifts and hospitality or decide when there is a conflict of interest and the company's communications and guidance may not be able to deal with the nuances or dilemmas of particular circumstances.

Advice lines are important as they allow sensitive questions to be raised in confidence. Employee or third parties may be reluctant to ask a manager for advice on a topic because although it may not concern an instance or suspicion of corruption, it may relate to a sensitive issue such as a potential conflict of interest involving a relative. The primary role of an advice channel is to be a point to which employees or others may turn to for advice but it may also be used as a route for receiving comments and suggestions for improvements to the anti-bribery programme.

16.6 Encourage issues to be raised internally

A company should encourage and facilitate employees to seek guidance or raise issues internally rather than seeking external recourse such as legal action or making a report to the media. Internally managed issues usually follow a set procedure but once an employee feels unable to trust the company to resolve an issue and goes outside, the path and resolution become unpredictable and can lead to adverse results for the company. This could result in a missed opportunity, both for the company and the whistleblower, to address the matter in a structured way with a proper review structure in place.

Employees should be informed of the company's policy regarding channels through communications and training. Employees should be aware of the advantage of using internal channels as well as their rights if they whistleblow externally. For instance, in the UK, the law provides that an employee may make a whistleblowing disclosure externally without losing their rights under the relevant law. In relation to external disclosures of this type, one option is to make the disclosure to a "prescribed person" (commonly a regulator, professional body or MP).

16.7 Security

The company must offer adequate protection to those who use whistleblowing or advice channels. Concerns about bribery are often sensitive and so the company should provide the option of reporting anonymously. The security provisions will vary according to the laws of local jurisdictions. In some countries such as the US, speak up channels must have the option that users be anonymous while others countries do not permit anonymity but require that they are suitably confidential and secure.

The process for handling whistleblowing should include provision for dealing with false and malicious allegations. This requires careful management as this may permit a review to be undermined or result in a whistleblower being penalised. The legitimate use of whistleblowing mechanisms must not provoke retaliation.

16.8 The legal & external context

Unfortunately, it remains common for those who speak up to be penalised and harassed by way of dismissal, stalled promotions, victimisation, non-payment of bonuses or attempts to restrict whistleblowing by terms in their employment contract. In such situations the employee may need to bring the issue to the attention of the authorities.

Recognising the unique and beneficial role of whistleblowing in exposing wrongdoing, some countries have introduced laws to protect and encourage whistleblowers. Many however do not have such protections; for instance, a Transparency International 2013 report on whistleblowing legislation in European Union countries found that that only four countries had advanced legal frameworks for whistleblower protection, 16 had partial legal protections and the remaining seven countries had either very limited or no legal frameworks.¹

Seven OECD countries encourage whistleblowing by providing financial incentives.² In the United States, the US Dodd-Frank Act and the False Claims Act provide for substantial rewards for whistleblowers. The Foreign Corrupt Practices Act also provides for rewards to whistleblowers up to 30 percent of the recoveries but only one award is believed to have been made under this provision, and the details have not been made public by the Securities and Exchange Commission (SEC).

Case study: Whistleblower penalised by management but ultimately rewarded by the law. [Click here.](#)

There is growing public awareness and support for whistleblowing, partly driven by continuing disclosures through leaks exemplified by the WikiLeaks, Panama Papers and Unaoil disclosures. In 2015, the US SEC received nearly 4,000 whistleblower tips, a 30 percent increase over the number of tips received in 2012.³

¹ Whistleblowing in Europe: Legal protections for whistleblowers in the EU, Transparency International, 2013. http://www.transparency.org/whatwedo/publication/whistleblowing_in_europe_legal_protections_for_whistleblowers_in_the_eu

² Committing to Effective Whistleblowing Protection in the Public and Private Sectors, OECD, March 2016

³ 2015 Annual Report to Congress on the Dodd-Frank Whistleblower Program, U.S. Securities and Exchange Commission.

CHAPTER APPENDIX

16.9.1 Case study: Whistleblower penalised by management but ultimately rewarded by the law

In 2016 Tenet Healthcare resolved criminal charges and civil claims relating to a scheme to defraud the United States and to pay kickbacks in exchange for patient referrals. The Tenet scheme was to pay kickbacks to a medical facility to induce them to refer over 20,000 expectant mothers from the illegal immigrant community to Tenet medical facilities so Tenet could bill Medicare and Medicaid. The Tenet scheme was exposed by a whistleblower who was a subsidiary's chief financial officer. When he discovered the scheme, the CFO voiced his concerns about the fraudulent arrangement to company leaders but was then fired without reason.

Of the total fine of \$513 million, \$368 million related to the civil settlement made under the federal and Georgia False Claims Acts. The Acts permit whistleblowers to file suit for false claims against the government entities and to share in any recovery. Ultimately the whistleblower was rewarded by the law, and his share of the combined civil settlement amount was approximately \$84.43 million.

RESOURCES

- [*International Principles for Whistleblower protection*, Transparency International, 2013.](#)
- [*Whistleblowing in Europe: Legal protections for whistleblowers in the EU*, Transparency International, 2013.](#)
- [*Speak Up Report*, TI-Ireland, 2015](#)

Transparency International UK

7 - 14 Great Dover Street,
London,
SE1 4YR

www.antibriberyguidance.org
twitter.com/transparencyuk