

A sharp blast

Executive summary

- Although many companies like to think they have an open-door policy, it is not always easy for employees to let superiors know that a corporate has, or may have, a problem. More prudent companies offer staff access to a third party, through which they can safely blow the whistle without fear of reprisals.

Whistle blowing is a topic that crops up more and more frequently in the news. It's not just about the occasional report of an aggrieved employee bringing down a corporate monolith in a rash of sensational headlines. Indeed, although such cases often refer to the victim as a whistle blower, the one thing they have usually not done is to blow the whistle prior to instigating legal proceedings against the employer. Rather, whistle blowing has become such a key issue in business life that it is now acknowledged as an important safeguard in the Combined Code on Corporate Governance, and the Financial Services Authority takes the view that whistle blowing arrangements serve the interests of both companies and consumers.

In short, it is no longer acceptable for an employer to tolerate a situation, or to allow a business culture to develop, in which its employees either know something is wrong and do nothing about it, or raise their concerns only to see them ignored or channelled to the wrong people.

IS THERE REALLY AN OPEN-DOOR POLICY? So why should treasurers be interested or concerned? In essence, because whistle blowing is now identified as the most successful method for detecting fraud at a time when concern about the issue, and economic crime, is growing exponentially. And as the Corporate Manslaughter and Corporate Homicide Act comes into force, companies are having to re-examine their health and safety provisions. Consider the following questions:

- It is often said that companies have an open door policy and that it is easy to report concerns, but is this always the case?
- How easy is it for someone in your organisation to bring to the attention of the board, or senior management, concerns about a potential fraud when all they have are suspicions?
- Are you sure that staff are comfortable raising corporate

IS WHISTLE BLOWING A POTENTIAL PROBLEM OR SIMPLE COMMON SENSE? **STEPHEN NORTON AND GRAHAM LONG** CONSIDER THE ISSUE.

governance issues through current procedures when they may be reporting to those suspected of involvement?

- Are you always made aware if your organisation has problems, real or perceived, with bullying, health and safety, discrimination, racism, etc?
- What practical measures has your company taken to address all these issues?

In the UK, the law relating to whistle blowing is set out in the Public Interest Disclosure Act 1998. The law aims to encourage a climate of openness in the workplace and to create a positive environment in which employees can raise their concerns without fear of reprisal. Under the Act, employees who make "protected qualifying disclosures" (whistle blowing) have statutory protection from dismissal or selection for redundancy, and from detrimental actions (such as denial of a pay rise). The Act protects qualifying disclosures, which in practice means any disclosure of information that in the reasonable belief of the employee relates to alleged wrongdoings by the employer, or any other employee, carrying out activities for which the employer is liable.

HOW SARBANES-OXLEY HELPS IN THE US In the US matters are more complex and possibly more advanced. The Sarbanes-Oxley Act 2002 requires companies to have an anonymous method for employees to report concerns relating to accounting and financial matters, and adopt a code of ethical conduct to promote prompt reporting of any violations of the code. In practice, Sarbanes-Oxley requires companies to have control systems in place to ensure that they can make timely public disclosures in accordance with securities

WHISTLE BLOWING IS NOW IDENTIFIED AS THE MOST SUCCESSFUL METHOD FOR DETECTING FRAUD AT A TIME WHEN CONCERN ABOUT THE ISSUE, AND ECONOMIC CRIME, IS GROWING EXPONENTIALLY.

available in the UK from companies such as Safecall. The service provided is not simply to address concerns about audit or accounting issues, but also covers fraud, dishonesty, health and safety issues, harassment, bullying and discrimination and security of information. It specifically addresses the risk that staff will fail to report concerns about these matters because of a lack of trust in what is available internally, a lack of awareness that an external way of reporting exists, or for fear of retribution.

The Combined Code of Corporate Governance requires a company's audit committee to review arrangements for staff to raise concerns about financial reporting or other matters, and to arrange for proportionate and independent investigation and follow-up.

Third parties offer an external procedure which can report directly to a senior nominated executive or to the audit committee. Employees have a straightforward and confidential means of highlighting matters discreetly to an external and independent third party. This is typically achieved by establishing a dedicated phone line direct to the service provider, available round the clock, 365 days a year, and publicising its availability to all staff. The intention is not to replicate internal processes but to provide a confidential alternative for those employees who may not wish to use an internally provided option.

A CULTURE OF RESPONSIBILITY AND INTEGRITY For all of these issues the principle remains the same: to provide a demonstrably independent service that allows employers to address potentially serious problems within their organisations at an early stage.

However efficient the system of internal controls it may have, and whatever the level of deployment of technology to detect fraudulent and other harmful activities it enjoys, a responsible company can now go further by working diligently to support a culture of responsibility and integrity. It is also a highly effective way of allowing concerns to be reported.

An increasing number of prudent employers are ensuring, with the assistance of such external companies, that they have procedures in place to address these vital challenges. In essence, it is common sense for companies to make the best possible use of information by listening to what their staff are trying to tell them, and by making it easy for them to blow the whistle on wrongful behaviour.

Stephen Norton is Director of Marketing at Law Debenture.
Stephen.norton@lawdeb.co.uk
www.lawdeb.co.uk

Graham Long is Chief Executive of law debenture company Safecall.
Graham.long@safecall.co.uk
www.safecall.co.uk

laws, and issue accurate financial statements. Appropriate reporting or whistle blowing procedures help detect fraud, allow proper information flow, and highlight any issues which could affect the veracity of a company's financial statements. All of these controls must be reviewed and audited by the company's external auditor.

But Sarbanes-Oxley does not operate in isolation. SEC and stock exchange regulations require audit committees of listed companies to establish procedures for the confidential, anonymous submission by their employees of concerns relating to questionable accounting or auditing, and procedures for addressing such complaints. While there is no prescribed complaint procedure, all employees must have a confidential, anonymous way to report such issues. The idea behind this is specifically and very deliberately to discourage fraud and encourage whistle blowing.

COURT RULING PAVES THE WAY In February of this year, a landmark court ruling paved the way for employees of US listed companies who blow the whistle on fraud that took place in the US to be protected under Sarbanes-Oxley even if they are based outside the US. Originally when the Act was passed, courts regularly refused to allow the extra-territorial application of the whistle blower laws in the Act, on the basis that it apply US law overseas in a way that Congress had not intended. This has now changed.

Sanctions are severe, as failure to adhere to these requirements may lead to enforcement action by the SEC or delisting from the stock exchange. To deal with these requirements it is common for companies to outsource the reporting function to a third-party service provider using a confidential hotline. This service is also