

Introduction: The Importance of Speak-up Arrangements

SPEAKING UP IN ORGANIZATIONS

Recent years have seen dramatic and fundamental changes in whistleblower procedures for organizations. Prompted by a spate of important public disclosures, organizations are now mandated by law in various countries to implement effective arrangements enabling employees to speak up about perceived wrongdoing. Yet few resources exist to help with this. To fill the gap, this book examines the opportunities and challenges associated with different types of whistleblowing arrangements (often called speak-up systems), and makes recommendations based on best practice. Our proposed model for the effective development of sustainable speak-up systems is rigorously grounded in new, empirical, international research, in a variety of organizational settings along with existing academic literature on the issue.

Whistleblowing forms a key means of addressing dangerous wrongdoing and illegal behaviour in today's organizations. The absence of effective speak-up arrangements prevents organizations and societies from avoiding major disasters. Attempts to alert the authorities to wrongdoing by internal personnel are currently on the increase. However, in many cases, suffering and retaliation experienced by whistleblowers is exacerbated because few if any procedures are in place to receive and follow up on concerns raised by employees. Even when systems are in place, they are often bypassed, and the whistleblower is silenced or over-ruled, as was the case in the Deepwater Horizon oil spill, the collapse of Enron, and the nuclear meltdown after the Fukushima earthquake, for example.¹ Whistleblowing has become an important issue, both for societies, as well as for organizations.

Speak-up arrangements can have economic benefits for organizations and society. They also save money both for private and public sector organizations. A recent study of over 5,000 firms shows that 40% of companies surveyed suffered

from serious economic crimes that averaged over \$3 million each in losses. Whistleblowers exposed 43% of these crimes, which means that whistleblowing was more effective than all the other measures combined: corporate security, internal audits, and law enforcement.² Workers who voice their concern can help to prevent the dysfunctional behaviour that leads to financial and reputational losses by firms and public sector organizations. Ineffective speak-up arrangements, however, limit their ability to do this, and ultimately harm the organization as well as the whistleblower.

The question of how to develop effective speak-up arrangements has become urgent. There is increased media attention for whistleblowers, and policy-makers across the world have lobbied to pass legislation protecting whistleblowers. Although legislation is essential for encouraging speaking up against wrongdoing, it has also drawn our attention to the missing link—that of the organization and its internal arrangements in place for making disclosures. Hence, implementing effective speak-up arrangements is now a vital part of reforming corporate governance, public sector accountability, and professional responsibility. With this book, we hope to contribute to the success of these reforms.

Until now, whistleblowing has mainly been researched from the point of view of the whistleblower. Our research is innovative because it provides insights into speaking-up from the perspective of those who operate the speak-up arrangements.

SPEAK UP ARRANGEMENTS: A NEW PERSPECTIVE FOR THEORY AND PRACTICE

This book offers valuable contributions for academic researchers, professional audiences and managers. It is unique because, unlike other studies and guides, it focuses on the context as well as the organization. We find that these aspects, including legislation cultural norms and economic structures, significantly influence the ways in which speak-up systems are implemented and used ‘on the ground’. Our analytic framing allows us to encompass both this ‘macro’ focus but also a micro-level examination of how such systems are used in the day-to-day activities of those tasked with receiving disclosures.

We find that existing studies of speak-up arrangements are somewhat limited in that they simplify what are, in reality, complex organizational dynamics. The linear, process-oriented models proposed by many scholars fail to capture the fact that speak-up attempts are made in organizational settings in which business-as-usual continues, even when operators are trying to deal with disclosures. Real-life speak-ups rarely if ever progress in a simple fashion: from disclosure, to remedy, to sanction of the wrongdoer. Our research highlights how attempts to achieve each stage are, in practice, made against a backdrop of organizational norms and structures that can represent obstacles to the successful disclosure and resolution of wrongdoing. Moreover, where substantial attempts

to remedy a wrongdoing are poorly managed, this can generate paralysis across the organization as an investigation proceeds.

This book also encompasses rich background detail on three important sectors of the economy, currently under the spotlight in the area of speak-up systems not least because of recent scandals: financial services, healthcare and engineering. It includes multinational and national perspectives and examples from both public and private sectors.

Through our analysis of practices across a variety of organizational settings, we offer novel and important insights into commonly misunderstood aspects of internal whistleblowing. We show, for example, how a lack of response, or silence, by the person who receives a disclosure, can be misunderstood by the person speaking up. The person can interpret this as a lack of interest in the wrongdoing, or worse, an indication of their impending marginalization by the organization. This situation is not uncommon. Thus, the onus is on the organization to instill and maintain a culture of responsiveness among managers tasked with receiving speak-ups.

In summary, implementing sustainable speak-up systems in organizations is more complex and intricate than often thought. It involves an intersection of human, technological and organizational dynamics that impact on each other in many ways, through the introduction and use of such arrangements. Radically new perspectives are needed to understand these aspects and to apply them successfully in our organizations. Our research shows how a speak-up arrangement can be implemented successfully. This can be done to ensure retaliation against whistleblowers is minimized, while speak-up operators provide effective and timely feedback to those who raise concerns. Moreover, by showing how speak-up operators attempt to overcome obstacles, we highlight the vital role trust plays for building a culture of openness and transparency in their organizations.

Through the detailed analysis we provide, our study is unusual in that it distills best-practice recommendations by combining both empirical analysis and a detailed review of the relevant literature on the topic, a strategy that enables us to develop a unique and valuable framework by which to understand speak-up arrangements in contemporary organizations.

SUSTAINABLE SPEAK-UP SYSTEMS: A MODEL

This book brings together a variety of perspectives to create a model for the development of sustainable speak-up systems. The key success factors in achieving this are independence, responsiveness, and time. Each of these is explained more fully later in this book.

Independence: The independence of the speak-up recipient is key. Employees are more likely to speak up to a recipient that is removed from the wrongdoing.

Responsiveness: Employees must perceive that their report is being acted on, for speak-up arrangements to work. There are sometimes barriers to how responsive the organization can be.

Time: The preferred channel for speaking up can change with time, as employees get used to the systems that are in place.

To enable independence, to enhance responsiveness, and to support speak-up systems over time, certain contextual features must be present. These are ethical culture and trust.

Ethical culture describes the environment inside an organization that enables and constrains various types of whistleblowing. Kaptein's work in this area for example shows how culture has an impact on how employees speak up, and to whom, whereas Roberts and colleagues show how these dynamics can enhance the success of speak-up systems. As a result of the analysis developed throughout this book, we add trust to this vital aspect. Trust needs to be created in the organization implementing the systems but it must also be maintained over time. For successful speak-ups, whistleblowers and speak-up operators have to make a 'leap of faith' and act on uncertain knowledge. Throughout this book we detail strategies for creating this trust, which include empathy with the whistleblower, and providing a choice of interfaces for the whistleblower to choose from. We also detail strategies for maintaining trust including communications regarding investigations that emerge from speak-ups and the relevant steps, along with operator independence. We describe an important aspect of this framework: the success factors of effective speak-up and the organizational contextual factors that support these are mutually constitutive—this means that the presence of each supports and reinforces the other. In summary, our model of sustainable speak-up systems encompasses the importance of independence, responsiveness and time, and of considering how these intertwine with trust and ethical culture.

RATIONALE

This book is timely. It is vital to study the ways in which whistleblowing/speak-up arrangements are deployed in contemporary organizations, today more than ever, for the following reasons:

- *Changes in legislation.* There has been a significant shift towards encouraging effective speak-up arrangements in organizations. For example, the OECD has published guidelines for protecting whistleblowers,³ the Council of Europe published recommendations for Europe-wide whistleblower protection,⁴ the European Commission proposed a directive to protect individuals that speak up on breaches of EU law.⁵ Laws are currently under review in New Zealand and Australia, and several African countries have proposed legislative initiatives.⁶

Industry and sectoral regulators are also increasingly mandating the organizations they regulate to put such measures in place for the internal disclosure of information, and are simultaneously restructuring their own organizations in ways that enable the receipt of information through external disclosures. Internal and external whistleblowing is defined more thoroughly in Chapter 2, but generally refers to disclosing to a member inside the organization or outside the organization respectively. An example comes from the Netherlands; organizations with at least 50 employees are required to have confidential integrity advisors to take disclosures in organizations, although the scope of their role is left intentionally vague,⁷ and the House of the Whistleblower has been formed to take external disclosures as well.⁸

From an external perspective, both the FCA and the Care Quality Commission (CQC) in the UK now have dedicated whistleblowing teams registering and following-up whistleblower concerns raised with them. In the United States, a recent Supreme Court judgement has had the effect that whistleblowers are now required to disclose externally to the Securities and Exchange Commission (SEC) to benefit from the protections under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) (see Box 1.1). Organizations that wish to encourage internal reporting, then, must have robust disclosure and support systems in place to encourage and facilitate those that wish to speak up. To date, fewer than 30% of organizations have speak-up systems in place, so significant change will be required. Whistleblower protection legislation is currently being drafted at the EU level, for example, guaranteeing that workers in member states will have a minimum level of protection.⁹

BOX 1.1 WHISTLEBLOWING REWARDS IN THE UNITED STATES—DIGITAL REALTY TRUST INC. V. SOMERS

In February 2018, the Supreme Court of the United States ruled that protections in the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 (Dodd-Frank) only applied to whistleblowers who made external disclosures to the Securities and Exchange Commission (SEC). The SEC had previously interpreted the definition of whistleblower widely, allowing those that had made disclosures externally as well as those that had reported internally to avail of the protections under the Dodd-Frank Act. Paul Somers, a manager at Digital Realty Trust, Inc., spoke up to senior managers about his boss hiding millions of dollars in costs that were over the budget, and Somers was fired in 2014. While lower courts agreed with

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Somers, the Supreme Court overruled the decision. Whistleblowers in the United States who speak up internally are now only covered by the protections in the Sarbanes-Oxley Act (2002) (SOX). Although SOX still protects whistleblowers against retaliation, they now have a shorter timeframe to bring a lawsuit and are entitled to less compensation than they would be if they brought a case under Dodd-Frank.¹⁰ The Government Accountability Project, the whistleblower advocacy organization in the United States, immediately called for revision in the law saying,

For whistleblowers, it strips Dodd Frank legal protection against retaliation for the 96 percent of corporate whistleblowers who never break company ranks. For corporations, it forces employees to go behind the company's back and run to the government whenever they see internal misconduct. Otherwise there will be no legal rights. For the SEC, it will mean a tidal wave of new investigative work if employees can no longer safely work through corporate ranks to challenge illegality. Congress never intended this result, and must act quickly to clarify poorly written statutory language. Otherwise corporate dysfunction will replace corporate accountability.¹¹

- *Whistleblowing forms a key means of addressing dangerous wrongdoing and dysfunctional behaviour in today's organizations.* The absence of effective speak-up arrangements prevents organizations and societies from avoiding major disasters.¹² For this reason, whistleblowing has become an important issue, both for societies as well as for organizations. Attempts to alert the authorities to wrongdoing by internal personnel are currently increasing. In healthcare for example, whistleblowing to the media led to the Public Inquiry into the Mid-Staffordshire Hospital Trust, and an enduring stream of NHS whistleblower cases triggered the *Freedom to Speak Up Review*.¹³ In Ireland, the treatment and attempted silencing of a whistleblower in An Garda Síochána (the Irish police force) led to the Charleton tribunal, which is still ongoing at the time of writing. In the wake of the financial crisis, in the United States the Securities and Exchange Commission (SEC) received 3,620 cases through whistleblower disclosures in the fiscal year 2014, up 10% from 2013, and 21% compared to 2012,¹⁴ and the Occupational Safety and Health Administration (OSHA) shows a generally increasing trend from 2007 to the present.¹⁵ In the UK, reports to the Financial Conduct Authority (FCA) have increased significantly over the past few years.¹⁶

- *Ineffective speak-up arrangements lead to suffering by whistleblowers.* Over 30 years of research shows us that although the logic of democratic institutions is dependent upon courageous individuals speaking up to publicize wrongdoing¹⁷ such individuals are often, paradoxically, ostracized and retaliated against for disclosures that aim to counteract corruption and protect the public interest.¹⁸ In many cases, suffering and retaliation were exacerbated because few if any procedures were in place to facilitate disclosure. Speak-up arrangements must focus on protecting the individual, as a first priority, and in-depth research is required to determine best practice for developing effective processes and structures.
- *Effective speak-up arrangements have economic benefits for organizations and society.* Whistleblowing is important from a societal and an ethical perspective, but it also saves money both for private and public sector organizations. Such disclosures can help to prevent the illegal behaviour that leads to financial and reputational losses by firms and public sector organizations.¹⁹ As mentioned earlier, whistleblowers exposed economic crimes that averaged over \$3 million in losses for companies that corporate security, internal audit and law enforcement were not able to detect.²⁰ The absence of effective measures means that organizations and institutions are denied an opportunity to address the wrongdoing that whistleblowers perceive, early on in the process, and thus lose time, money and effort by having to engage in protracted and unnecessary legal battles.

WHO SHOULD READ THIS BOOK?

- *Managers in contemporary organizations who must implement speak-up arrangements.* The book is a practical resource for use by managers who implement speak-up procedures because it offers advice on creating effective procedures for speaking up when wrongdoing is observed. This advice is also useful for managers who are seeking to enhance existing speak-up arrangements. It will also appeal to policy-makers internationally who despite actively advocating the use of speak-up arrangements have little empirical research upon which to draw. Readers from these groups will learn about effective procedures that enable whistleblowers to remain protected while disclosing information and explaining how to militate against the kinds of retaliations previously experienced by this group. Other readers include regulators who encourage such changes, professional bodies who advise their members on implementing and using speak-up arrangements, trade unions and other organizations who play a role in conflict mediation, and academics.
- *Organizations that regularly engage with whistleblowers.* Readers from these groups will learn how to offer evidence-based advice on how to effectively raise concerns through speak-up arrangements, making whistleblowers able

to more effectively disclose information to both organizations internally and regulators if needed.

- *Policy-makers, public representatives, and professional bodies involved in whistleblower procedures.* This group includes Parliamentary Select Committees, ‘prescribed persons’ under country-specific legislation, including regulators, and professional bodies along with the advocacy groups that are actively engaging with organizations to implement speak-up arrangements, for example. These readers will become better informed about this key issue, which will help them make appropriate decisions about how to best to support whistleblowers and how to advise organizations.
- *Academics.* This book integrates conceptual work on the nature of speak-up arrangements and the factors that contribute to their effectiveness, including the theoretical framework outlined earlier. Currently, little is known about the complex factors that enhance effective speak-up arrangements. Deeper understanding is required to enhance knowledge in this area and inform policy debates. This book is a first step in this direction and academic readers will learn the basics of speak-up arrangements so they can build on it with future research.

PURPOSE OF THE BOOK

After reading this book, readers will be able to:

- 1. Identify the major organizational, structural, and cultural obstacles to speaking up through speak-up arrangements, in their own organizations.** As detailed in this book, obstacles include employees’ lack of awareness about such procedures, a lack of training and experience in how to use the internal/external procedures, expectations of inaction from previous experiences, and middle managers’ risk aversion in effectively addressing issues, despite being the first recipients of whistleblower concerns.
- 2. Propose effective whistleblowing and speak-up arrangements in their organizations.** This involves an understanding of the significance of culture, power, responsiveness, and trust in the implementation and use of a successful speak-up procedure, along with the organizational changes required to design and implement these.
- 3. Understand the specific policy and legislation requirements that can promote or impede the effective implementation of speak-up arrangements,** and how these can be translated into commercial and public organizations across sectors and cultures.
- 4. Distinguish between internal and external reporting arrangements.** The book offers information and clarification on key issues, including the distinction between internal and external speak-up procedures, which is in practice somewhat blurred.

ABOUT THE AUTHORS

The book benefits from the significant experience of its three authors in the area of whistleblowing research, in the public sector (Vandekerckhove), health and social care (Fotaki), and banking and financial services (Kenny). All authors have significant expertise in researching and writing about the topic of whistleblowing and speaking out: Kate Kenny carried out an in-depth study into whistleblowing in banking and finance organizations in the UK, Ireland, Switzerland, and the United States, with a focus on compliance and risk officers.²¹ She has assisted *Public Concern at Work (now Protect)*, the *Financial Conduct Authority* and *Transparency International Ireland* on their whistleblowing research and communications. Her publications draw on critical and psychosocial theories to develop new perspectives on whistleblowing.²² Her recent collaborative work focuses on postdisclosure survival strategies of whistleblowers across a variety of sectors. Wim Vandekerckhove was the lead in a qualitative research study on the implementation of whistleblowing arrangements in the NHS for the Freedom to Speak Up Review,²³ and carried out research on Belgian public and private sector whistleblowing arrangements for a Transparency International country report on Belgium.²⁴ He has also collaborated with *Public Concern at Work (now Protect)* on the analysis of 1,000 cases from their whistleblower helpline.²⁵ He has provided expertise to the Council of Europe, the Dutch Whistleblower Authority, and Transparency International on a number of occasions as well. He is currently involved in committees developing a whistleblowing standard with the British Standards Institute and the International Organization for Standardization (ISO). Marianna Fotaki has worked on the role of internal auditors as internal whistleblowers in government agencies in Indonesia, with an internal auditor seconded into the project funded by the World Bank.²⁶ She has also worked as the EU advisor for governments of Russia, Armenia, and Georgia on governance of Social Security, health, and public policy for 10 years in total. Fotaki has been involved in various projects on the impact of introducing market incentives on the quality of health-care systems in the NHS in England and how the pressure to produce savings by management affects health staff's behaviour leading to widespread patient abuse and the systematic perversion of care.²⁷ More recently, she advised the United Nations Office on Drugs and Crime and helped developing ethics modules for the Education for Justice (E4J) initiative.²⁸ Marianna is a member of the Academic Board of Academy of Business in Society (ABIS) and co-directs pro-bono with the Centre for Health and the Public Interest. She is also involved with the European Business Ethics Network (EBEN).

In addition to research focus, each author brings academic expertise:

Vandekerckhove brings expertise in comparative studies of the institutional dimensions of whistleblowing procedures and legislation; Fotaki brings expertise in health with a focus on mental health, psychoanalytic, and psychosocial approaches, along with a specific focus on business ethics and public governance. This complements Kenny's expertise on whistleblowing and organizational

culture and identity, with a focus on the banking and finance sector, all of which are essential for the purpose of this project. We have and continue to work with key organizations in this area: the Government Accountability Project (US), Transparency International (Ireland, Belgium and Berlin) and Whistleblowers UK.

Finally we would like to thank Research Assistants Meghan Van Portfliet and Didem Derya Ozdemir for their invaluable help on this project.’

ABOUT THE BOOK

Chapter 2 begins with a discussion of how law-makers and organizations are increasingly requiring that speak-up arrangements be implemented, and what implications this has for whistleblowers where there is no encouragement or support for them to speak up, highlighting retaliation as one of the possible consequences. We then consider the existing literature and use it to debunk several myths. We show that whistleblowing is a process and not a one-off event by presenting data that shows whistleblowers make multiple disclosures to increasingly independent recipients. Additionally, we show that internal and external whistleblowing are not separate occurrences, but are usually part of the same process.

Next, we introduce some theoretical ideas from the literature: we examine the research on employee voice because whistleblowing can be understood as an act of employees using this capacity in their organizations to speak up about wrongdoings. We debunk the traditional myths from several research streams and show how the focus on motivation for speaking up is less important than the fact that it happens in organizations. This act of speaking up has been researched using the concept of fearless speech (*parrhesia*), which we also examine to describe and highlight the importance of the hearer of speak-ups. We then link this fearless speech to concepts of trust: between the employee and the organization, and in interpersonal connections. We next examine empirical research that has been carried out in organizations that have implemented speak-up systems and note some key findings including the importance of an internal champion for the initiative to succeed.

Chapter 3 draws on existing literature and primary research carried out by the authors (which was generously funded by ACCA and ESRC) to present three case studies of whistleblowing in the finance, engineering, and health sectors. A full outline of the study’s methods is given in the Appendix. This research is important because there are few empirical studies into this topic.²⁹ The case studies are based on research that was conducted in different organizational and geographical cultural settings. These include (1) implementing speak-up arrangements at an NHS Trust (UK, public sector); (2) implementing speak-up arrangements at an engineering multinational firm (UK and multiple continents, private sector); and (3) implementing speak-up arrangements at a leading retail bank (UK and Ireland, private sector).

The chapter starts with a discussion of the banking sector, illustrating the pervasiveness of a culture of silence that exists in such organizations. Reasons for this silence are identified, which include failure to investigate claims, retaliation against voicing employees and social isolation of voicing employees from colleagues. Next the engineering sector is featured, highlighting the serious consequences that can result from wrongdoing in this area, and the ethical codes that have been implemented. Finally, the healthcare sector is examined with a focus on the NHS in the UK. The issues that have arisen from the decision to run the institution according to market principles are discussed. Case studies are presented for each sector, and key learnings are discussed. To conclude the chapter, parallels and differences in speak-up mechanisms and culture across sectors are pointed out, and the economic and political context that informs the culture is discussed.

Chapter 4 begins with an overview of Kaptein's research on how culture influences the decision to speak up or not, and then revisits speaking up as a protracted process in more detail, building on the discussion from Chapter 2. Next, we discuss the expectations that are intertwined with speaking up, drawing on Watzlawick's communication theory and Bird's idea of 'muted conscience'. We then present some of the challenges to operating speak-up channels, highlighting the concepts of independence, responsiveness and time, and drawing on our own research for examples of these challenges in practice. Following this, we consider some of the barriers to responsiveness and the role trust plays in facilitating responsive behaviour. Finally, we conclude with recommendations on how to use the speak-up data that is captured when arrangements are in place to help assess the receptiveness of an organization towards employee voice.

The overall aim of the book is to provide a practical guide that is strongly informed by critical interpretation of the relevant research including our own and other academic work. By drawing on various empirical and theoretical frames, we are able to present whistleblowing as a collective endeavour, show the importance of mutual support of employees who wish to speak up, as well as the necessity of fostering a culture of openness and transparency that is conducive to promoting fearless speech. All of these ideas can be used by managers to implement speak-up arrangements that are effective and protect both whistleblowers and the organization. We begin in Chapter 2 by discussing the importance of speak-up arrangements.

ENDNOTES

1. Ionescu (2015: 57); Kenny (2019); Kenny, Fotaki, and Scriver (2018).
2. Devine (2012).
3. OECD (2011).
4. Council of Europe (2014).
5. EU Commission (2018).

6. Blueprint for Free Speech (2018).
7. De Graaf (2016).
8. Boone (2016); van Steenberghe (2014).
9. Rankin (2018); EU Commission (2018).
10. Gresko (2018).
11. Government Accountability Project (2018).
12. Devine and Maassarani (2011).
13. Francis (2015).
14. SEC (2014).
15. OSHA (2018).
16. FCA (2015a).
17. For example, see Berwick (2013); Harding (2014); O'Brien (2003).
18. Alford (2001); Devine and Maassarani (2011).
19. Roberts et al. (2011).
20. Devine (2012).
21. Kenny (2014); Kenny (2018).
22. Kenny (2017); Kenny, Fotaki, and Scriver (2018); Kenny, Fotaki, and Vandekerckhove (2019); Kenny (2019); Vandekerckhove, Fotaki, Kenny, Humantito, and Ozdemir Kaya (2016).
23. Vandekerckhove and Rummyantseva (2014).
24. Vandekerckhove (2013).
25. Vandekerckhove (2013).
26. Fotaki and Humantito (2015).
27. Francis (2013).
28. See <https://www.unodc.org/dohadeclaration/en/topics/education-for-justice.html> for more information on this project.
29. Miceli, Near, and Dworkin (2008).