



ISTOCK

The GlobalEthicist

Executive whistleblowing: what to do when no one listens

If you're a senior executive you need to be careful how you expose serious wrongdoing, says **Andrea Bonime-Blanc**

I recently heard a keynote address by the former chief executive of Olympus, Michael Woodford. Woodford was the Olympus boss who within months of his appointment blew the whistle on the company's multi-year \$1bn-plus financial fraud. After exposing the company's fraud, Woodford wrote about it in the book *Exposure*, soon to become a movie.

This example underscores the difficulty that all whistleblowers (or people who dare to speak up) experience within their organisations. Speaking up about perceived or actual wrongdoing can be one of the most difficult and vexing ethical, moral, legal and personal dilemmas anyone can face in their lifetime. The stories of those who have blown the whistle only to be ostracised, demoted or terminated are the stuff of the bestseller lists and box office blockbusters.

Most larger or enlightened companies have an ethics and compliance programme including a hotline or helpline and anti-retaliation policy designed to protect potential whistleblowers. These programmes are focused on the overall employee population and sometimes third parties. Ask just about anyone in just about any company whether these programmes really work and the answer is likely to range from not at all to maybe.

What happened at Olympus is a little different from the usual as it involved a high-level executive as the whistleblower. This highlights the unique and intense difficulty that senior executives may experience as witnesses to alleged improprieties.

Picture yourself for a moment as the chief compliance officer or the chief sustainability officer

or the head of a business unit within a large global company. You think you may have witnessed bribery, funky accounting, false expense reports or safety violations. Or maybe you've been a witness to earnings management activities behind closed doors within the C-suite.

And it doesn't just seem to be an isolated event. It appears to be a consistently poor approach, something that is condoned, tolerated or maybe even encouraged, incentivised or directed from above – the top, maybe even the very top. And maybe even the board kind of knows that something is going on but is not really interested in the details or in stirring the pot, or maybe the board is deliberately looking the other way in exchange for a comfortable payday.

And you, the senior executive, are not comfortable with what's going on – whether from a legal standpoint because you believe local, national or international laws are being violated, or from a compliance standpoint because regulations and standards aren't being adhered to, or from an ethical and values standpoint because, while not illegal, the culture that the organisation and its leadership repeatedly touts and markets is pure window-dressing.

Limited options

So you review resources that may be available to address and resolve the issue. As a senior executive within your company do you have the same options as those available to all employees?

- Does it make sense to call the company helpline or hotline on an anonymous basis? This option

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may be limited or compromised given your visible executive role.

- Should you call the helpline or hotline and openly identify yourself? This option probably makes no sense given your executive role.
- Do you talk to someone else in-house, such as human resources, the legal department or internal audit? If you're talking to someone that is lower ranking in your company, their ability to help you may be limited.
- Is there another executive you should consult and, if so, who? Depending on the wrongdoing and the identity of the perpetrators, you may not gain proper assistance.
- Do you reach out to a member of your board of directors, maybe the chair of the audit committee or equivalent? This could garner you some assistance but, depending on board politics and the relative stature of the CEO, circumstances may not be aligned in your favour.
- Do you take it outside to your external auditors and if so how do you prevent this issue from becoming a runaway train? This is a very tricky area – external auditors are unlikely to be a source of immediate advice and help even when the issue is limited to financial allegations.
- Do you go further outside the organisation and talk to outside legal counsel? And if so, which lawyers – the company's or your own? Again, specific circumstances will dictate which steps make sense but you might not get very helpful advice in either case.

It is abundantly clear that if you are a senior executive your options are limited. And as a member of senior management, you are more likely to give other members of senior management the benefit of the doubt and a lot more likely to be aligned with them from a financial performance management standpoint, which in turn will make you less willing to rock the boat.

But you still have something nagging deep inside. What you have witnessed, what you suspect, seems to be truly egregious – maybe theft, corruption, human rights abuses, safety violations, or financial fraud – like at Olympus. You have tried everything and no one will listen. What's next for you? Here are four options.

1. **Resign and move on** without whistleblowing. This presupposes that you can afford, financially, to walk away and can explain to your prospective new employers why you left your last job so abruptly.
2. **Take the severance package** you are offered, sign the confidentiality agreement, make a run for the exit and do your best at explaining your situation to prospective employers. Good luck with this one, too, but at least here you have a severance package. On the other hand, you may suffer moral pain, as this makes you complicit –

legally or morally – with a bad situation that is getting worse.

3. **Go to the regulators** and become a whistleblower. This is a high-risk option that may leave you unemployed and hoping for, but unlikely to attain, a whistleblower bounty. You may be unemployed, possibly for life, but your conscience will be clear that you didn't walk away as a crime or other violation took place.
4. **A combination of 1 or 2 and 3**, as in most countries companies do not have the right or ability to silence a potential whistleblower on a possible criminal claim no matter how strong their severance confidentiality commitment is.

Do your homework

While none of these four options is appealing, it is possible for an executive whistleblower to protect himself or herself. Next time you join a company, read everything you can about the public reputation of the company, including online ratings by existing and former employees (eg Glassdoor), and scour all publicly available media and regulatory information.

Try to negotiate severance terms upfront as part of your employment contract. If your role is susceptible to board oversight (eg chief ethics, compliance, audit, risk, financial or legal officer), ask to have a reporting line to the board and for the board to have a role in your performance management and any termination decisions.

Michael Woodford took the third of our options above. And what has become of his career, his professional life? Will he ever be offered a CEO role at another company? The truth is that most whistleblowers end up marginalised and often do not find equivalent employment again. And only a tiny minority eventually gets a whistleblower's bounty. Most won't collect anything but the opprobrium of others and the aura of a tell-tale. While Woodford may be OK with being a writer and movie star, most whistleblowers won't get that opportunity and will fade away into anonymity, tainted by what they did, and blemished, in the eyes of future employers, by the fact that they could be a threat to their companies as well.

There is much work to be done within organisations to improve both the cause and the act of whistleblowing. A first step may be for companies to stop using the term "whistleblower" and start using more constructive words such as "speaker", "enabler", "communicator" or maybe even "conscientious reporter". Perhaps then companies can start putting together the semblance of "organisational justice" where it is safe to speak up, problems get tackled and resolved, lessons are learned and assimilated and the leadership (both C-suite and board) sets the right cultural tone to begin with. But that'll be a topic for another column. ■

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