



Forensic Focus

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The Importance of Whistleblower Mechanisms and Protecting Whistleblowers

By Jason Armstrong, Vice President, KPMG Forensic Inc. KPMG in Canada

When billions of dollars are lost each year to occupational fraud, the need for organizations to invest in well-functioning whistleblower mechanisms has never been clearer. When implemented and maintained properly, whistleblower mechanisms can prove to be a valuable component of an organization's Anti-Fraud Regime, helping both to prevent and deter fraud and to detect it when it occurs. Unfortunately, whistleblower mechanisms are not always used effectively. In some cases, they are established and then poorly communicated and quickly forgotten. In others, the employees may not trust management or the process, often due to fear of reprisal from management or being ostracized by colleagues. Regardless of the reason, if an organization fails to obtain whistleblower complaints or other tips relating to potential fraud (collectively hereafter "Tips"), it may be missing out on potential cost savings and at the same time giving employees and the market in general a message that it doesn't care about preventing fraud.

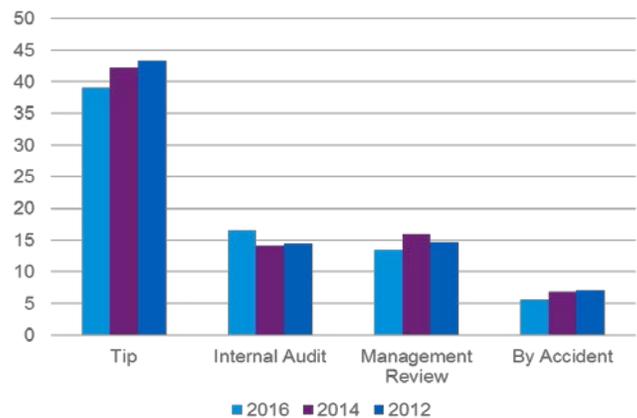
The Importance of Tips

Tips are consistently found to be the number one method of detecting fraud. Tips can range from whistleblower complaints made formally through a hotline to simply a conversation discussing an area of concern that leads to further escalation or review.

The Association of Certified Fraud Examiners (ACFE) publishes a report¹ every two years outlining its findings in relation to occupational fraud. In its reports from 2012, 2014 and 2016, Tips were consistently and by far the most common method of detecting fraud. In 2016, Tips were the detection method for 39% of all cases reviewed while the next highest method of detection was 16%.

Internal audit and management reviews are also instrumental in helping to detect fraud, and should form part of a robust Anti-Fraud Regime. As these exercises typically occur at planned intervals and focus on specific areas or time periods, they may lack in depth and breadth of coverage. Tips, on the other hand, can occur any time and come from anywhere inside or outside the organization.

Occupational Fraud - Method of Detection (%)



Source: 2012, 2014, and 2016 ACFE Report to the Nations

Another key finding from the 2016 ACFE report was that in 51% of the instances of occupational fraud employees were the source of the Tips. In another 14%, the source of the Tips was anonymous, but it is likely that many of these anonymous Tips came from employees. While many organizations struggle with allowing or processing anonymous whistleblower complaints, mostly due to the difficulty in following up with the complaint if it lacks details, the ACFE data would suggest that anonymous Tips can be effective. Finally, the 2016 ACFE report also found that where the organizations had established hotlines (i.e. a formal whistleblower mechanism), Tips were the fraud detection method in 47% of instances. For organizations without hotlines, Tips were the detection method for only 28% of instances, indicating that established whistleblower mechanisms increase an organization's ability to receive more Tips.

Whistleblower Mechanisms Help Reduce the Cost of Fraud

Where occupational fraud has occurred in an organization, the existence of whistleblower hotlines has a significant impact on the aggregate amount of the fraud losses. In 60% of the fraud instances in the 2016 ACFE report, the organization had a whistleblower hotline. For these organizations, the median duration and loss of fraud was 12 months and \$100,000, respectively.

¹ - The 2016 ACFE Report to the Nations on Occupational Fraud provides an analysis of 2,410 cases of occupational fraud that occurred in 114 countries throughout the world.



Where no hotline existed, the duration and magnitude of the frauds detected doubled.

When whistleblower hotlines are implemented and maintained properly, they can significantly reduce an organization's exposure to fraud by allowing for earlier detection and therefore savings in the form of reduced fraud losses from the earlier detection.

Protecting Whistleblowers

It is clear that employees play a vital role in the whistleblowing process. However, if employees do not trust the organization's management, the entire process has the potential to be ineffective. Historically, employees have faced retaliatory measures that include: isolation or humiliation; implied and overt threats; poor performance ratings; dismissal; and even criminal prosecution. If whistleblowers are to come forward, they need protection from these retaliatory measures and they need to believe in management's integrity to rely on this offered protection.

Conversely, in order for organizations to be sufficiently motivated to protect whistleblowers, they first need to understand the value of whistleblowing. Aside from the potential cost savings noted above, organizations should want to be informed of any suspected impropriety or corruption. Particularly, they should want to be informed directly, rather than learning of issues from social media or after being contacted by law enforcement.

Without the employees' trust of management, there are gaps in the protection of whistleblowers that will give employees cause for concern. While recent legislation has established various levels of protection for whistleblowers, certain groups of employees are not protected to the same extent as others. To illustrate, some level of protection for whistleblowing or against employer reprisal is extended to the following groups:

- Employees of companies listed with the US Securities Exchange Commission (SOX 806 and 1107);
- Employees of companies listed with the Ontario Securities Commission (OSC section 121.5);
- Employees of the Federal Government of Canada (the Public Servants Disclosure Protection Act);
- Employees of various provincial and municipal organizations including universities and hospitals (i.e. Alberta's Public Interest Disclosure Act); and
- Individuals that raise concerns directly to law enforcement officers (Canadian Criminal Code section 425.1).

Missing from the above protections are employees of private, non-listed companies who report their concerns internally or to someone outside of law enforcement. While the Provinces of Saskatchewan and New Brunswick have enacted legislation to provide some protection to these employees, other provinces have yet to do so.

Promoting Confidence in Whistleblower Policies

Organizations not governed by the above legislated whistleblower protections need to provide their employees some form of protection against reprisal if they want to truly benefit from a whistleblower mechanism and the Tips that will inevitably be provided through it. To do this, an organization's whistleblower policy needs to be explicit in providing protection to employees that disclose Tips, whether or not disclosed through a specific mechanism like a hotline. As such,

whistleblower policies should include:

- encouraging employees to feel confident in raising serious concerns;
- providing various ways for employees to raise those concerns, including anonymously where possible, and also receive feedback on any actions taken as a result;
- identifying clear guidelines of what constitutes reprisals against a whistleblower and what the employee can do if they are encountered;
- reassuring employees that if they raise concerns in good faith and reasonably believe them to be true, they will be protected from possible reprisals or victimization; and,
- clearly identifying that the whistleblower mechanism is not to be used for matters that have more appropriate programs or reporting mechanisms (i.e. grievances, harassment).

Additionally, one of the common pitfalls of whistleblower mechanisms is that the "tone from the top" suggests the mechanism is to be avoided or disregarded altogether. This could come from management's lack of demonstrated support of the program or even from insufficient communications to provide reminders or updates on successful investigations. There are several steps that management can take to provide a strong "tone from the top" and assuage the fears of potential whistleblowers including:

- demonstrating support for whistleblowing and whistleblower protection through ongoing training, workshops and announcements;
- properly documenting the policies and procedures for reporting and disseminating concerns including identification of potential conflicts of interest between the investigation team and the concerns or the whistleblower;
- ensuring that the confidentiality of the whistleblower is maintained at all times and, where possible, allow for anonymous reporting of any concerns; and clearly defining and enforcing anti-reprisal policies.

Summary

Empirical evidence has consistently shown that Tips are the most common method of detecting occupational fraud and employees are consistently the greatest source of these Tips. In this age of increasing and constantly evolving fraud, the need for organizations to invest in well-functioning whistleblower mechanisms to take advantage of these Tips is increasingly important. The awareness and effective use of these whistleblower mechanisms can ultimately save many thousands of dollars or more each year in fraud related losses.

Organizations should therefore take steps to provide employees with access to whistleblower mechanisms that are right for them. Organizations should also establish and foster a culture of intolerance toward unethical and fraudulent behavior by encouraging others to blow the whistle on any concerns of fraud they might encounter. Most important though is the need to protect those who come forward with information of concerns, lest no such information be brought forward and fraud continues in the organization, undetected.

Jason Armstrong

Vice President

KPMG Forensic Inc.

KPMG in Canada

T: 403-691-8183

E: jasonarmstrong@kpmg.ca

For more information, visit kpmg.ca/forensic or

Contact us

Montréal

Stéphan Drolet
T: 514-840-2202
E: sdrolet@kpmg.ca

Greater Toronto Area

Peter Armstrong
T: 416-777-8011
E: pearmstrong@kpmg.ca

Corey Fotheringham
T: 416-218 7974
E: coreyfotheringham@kpmg.ca

Myriam Duguay
T: 514-840-2161
E: myriamduguay@kpmg.ca

Colleen Basden
T: 416-777-8403
E: cbasden@kpmg.ca

Southwestern Ontario
Karen Grogan
T: 519-747-8223
E: kgrogan@kpmg.ca

Dominic Jaar
T: 514-840-2262
E: djaar@kpmg.ca

Enzo Carlucci
T: 416-777-3383
E: ecarlucci@kpmg.ca

Calgary
Paul Ross
T: 403-691-8281
E: pross1@kpmg.ca

Ottawa
Kas Rehman
T: 613-212-3689
E: kasrehman@kpmg.ca

Joe Coltson
T: 416-777-8786
E: jcoltson@kpmg.ca

Vancouver
Suzanne Schulz
T: 604-691-3475
E: saschulz@kpmg.ca