



The Work Couch

NAVIGATING TODAY'S TRICKY PEOPLE CHALLENGES TO
CREATE TOMORROW'S SUSTAINABLE WORKPLACES

Season 2

Episode 6 – Whistleblowing Part 2 – How to approach whistleblowing complaints with Sybille Raphael

Ellie: Hi and welcome to the Work Couch podcast, your fortnightly deep dive into all things employment. Brought to you by the award-winning employment team at law firm RPC, we discuss the whole spectrum of employment law with the emphasis firmly on people. My name is Ellie Gelder, I'm a senior editor in the employment equality and engagement team here at RPC and I'll be your host as we explore the constantly evolving and consistently challenging world of employment law and all the curveballs that it brings to businesses today. We hope by the end of the podcast you will feel better prepared to respond to these people challenges in a practical, commercial and inclusive way. And to make sure you don't miss any of our fortnightly episodes, please do hit the like and follow button and share with a colleague.

With whistleblowing cases regularly dominating today's headlines, most recently the Post Office and Horizon scandal, where a whistleblower's evidence was crucial to the sub-postmaster's claims, we are seeing what many would describe as a welcome shift in how employers should be approaching workers' concerns about wrongdoing in the workplace, reflecting increased efforts to foster speak up cultures.

So today in the second part of our mini-series on whistleblowing, we're going to look at the practicalities of whistleblowing and we're gonna discuss how businesses can respond to employees' concerns in a proactive and effective way. So, joining me today to share her expertise on this topic, I am thrilled to welcome Sybille Raphael, Legal Director at whistleblowing charity [Protect](#).

Hi, Sybille. Thanks so much for joining the Work Couch today. It's really wonderful to speak to somebody who's working so closely on all things whistleblowing.

Sybille: Hi, Ellie, lovely to be here, thank you.

Ellie: So, Sybille, can I just start with them by asking you about the work that Protect does to support people who blow the whistle because your services are in demand more than ever and you also help businesses navigate this notoriously difficult topic.

Sybille: Yes, indeed. So, Protect is a charity. We were founded in 1993 to campaign for the UK to adopt a law protecting whistleblowers, which it did in 1998, the second country in the world. But we stayed around because nobody quite knew how this new law would work. And so, we set up this free legal advice line where we advise whistleblowers on how to raise their concern in the most effective way and what they can do when things go wrong. We've individually advised more than 50,000 whistleblowers to date. Last year, we've seen a significant increase. In February this year, we reported that calls to our advice line are up by 23% year on year, and that translates roughly to 3000 calls per year. We're unusual in that we self-fund, you know, how do we fund this advice line? Well, by selling training and consultancy to businesses. And that, along with our policy and campaign work, gives us a real 360 view of whistleblowing. And I always say I have the best job in the world because I do a bit of everything. And we feel we help at the individual micro level, but also at the macro level, looking at the systems, businesses put in place and the even more macro level looking at you know how we can change the law, the regulation to make whistleblowing work better for all.

Ellie: Absolutely. And it's such a unique perspective, as you say, having that 360-degree view. And I mentioned at the outset, the Post Office and Horizon scandal, many of us would have watched the ITV drama. And the question people keep grappling with is why did nobody speak up?

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- Sybille:** Yes, why did nobody speak up or why did nobody listen up? On the advice line, we are told daily that, you know, you raise a concern and it's like throwing a pebble in a dark hole. In our 2023 stats, we know that 42% of the concerns that whistleblowers have raised have been ignored. It's not just they've been investigated and found that they were not substantiated. No, they were not even looked at, totally ignored. But of course, there's also a lack of speaking up. Why? Because speaking up is not easy. We talk about the whistleblower's dilemma. Well, why do you stay silent when you've witnessed wrongdoing? Partly because you fear you're going to suffer if you raise it. Indeed, 73% of our callers say that they've been victimised for blowing the whistle. And it's also futile. So not only are you going to suffer from it, but you know you're going to be ignored because you have no faith that anyone will do anything about it. And the other reason why maybe you're not going to speak up is maybe you're not sure, maybe you don't quite know what's going on and maybe also it would be bad for you, it will be you know killing the golden goose if you report wrongdoing and I think what we've seen in the Post Office is how saving you know the Post Office reputation was seen as something even more important than listening to investigating the report of wrongdoing in the Horizon system so that's also another reason why maybe you just don't speak up.
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- Ellie:** And you mentioned that sort of fear of the consequences of speaking up about wrongdoing. So how can employers then ensure that people that blow the whistle are adequately shielded from being penalised or victimised?
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- Sybille:** First, employers need to remember that speaking up is inherently stressful because you're disagreeing with a group. You're finding a problem where no one else has found any other problem, or at least you don't know that anyone else has, so inherently it's isolating. Also, it's the natural human response to anyone bringing you a problem is to be defensive.
- When someone tells me "There's a problem in your team, I don't like it". I say, "No, I love my team. I recruited them. I know they're great. Why are you telling me there's a problem?" So, victimisation is bound to happen in some shape or form. And we say that therefore prevention is much better than cure. And having systems where whistleblowers can raise their concern in a truly confidential manner, training managers in how to handle whistleblowing concerns is also essential. How to receive the concern, how to get past the emotion, past the messenger to get to the message, to get to the useful information that you need. Why it's so important to thank the whistleblower, you know, gives you this information, gives you this gift. Why it's important to reassure them that they've done the right thing they've come to you instead of staying silent and to assure them that they're not going to suffer from it, even if they're wrong. And obviously some whistleblowers will be wrong because they only have a small narrow angle on the problem. There may be a perfectly innocent explanation to what they think is actually wrongdoing. But what you want is your workers to tell you about the risks. You don't want them to start investigating to determine whether or not it's indeed happening.
- No, you'll take it from there. So how to conduct a whistleblowing investigation is not necessarily very easy. And you do need to train your staff on how to do it properly and how to shield the whistleblower while you're doing it. So, you need to have structures, you need to have systems in place. It's also really important you do something. If things are raised, actions need to be seen to happen. Otherwise, obviously, wrongdoing would continue in all impunity. And so, you also need to look at your comms, how you engage with your workforce and monitor, assess, track your systems and at Protect we have developed unique benchmarks that really goes under the skin of your arrangements. And we have more than 200 very specific questions which we ask organisations and then we come back with recommendations, with actionable results. And we look at your governance, we look at accountability, at your policy, your procedures, your leadership. We also look at your communication, your training awareness, the trust. And we look obviously at your operations, your records, your investigation, the resolution of the concern, the feedback you give and so on and so forth.
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- Ellie:** A whole host of practical ways then that you can really take steps to help protect people. It's interesting you mentioned it's really isolating to raise a concern. That just reminded me again of the Post Office case where people were told that they were the only one that had that problem. I think it's really interesting how the narratives really changed significantly around in light of the #MeToo movement and other really high-profile cases, there has been a real shift, hasn't there, Sybille, in how whistleblowers are now seen?
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- Sybille:** Yes, whistleblowers, when we were founded 30 years ago, were very much seen as a snitch. And now, more often than not, they're presented as heroes, which is not necessarily very good either, because we want to say whistleblowing is a very everyday thing. We should all blow the whistle about some things. So, to present them as these sorts of heroic martyrs dying for their cause is not necessarily very helpful either, but at least they're not presented as a snitch. Why? Well...Hey, research shows time and again that whistleblowers are the quickest and easiest way for organisations to detect fraud, for instance. They're much better than internal audit. Workers are the eyes and ears of an organisation, so you really want to make use of it. And I know that very often, you know, there's a sort of paranoid fears of malicious whistleblowers, but in reality, they're very, very rare and Parliament in its wisdom got rid of a good faith requirement which was there in the original law. It's very possible that the whistleblower is wrong. Indeed, you want some of your whistleblowers to be wrong because you want them to blow the whistle about risks. It's also very possible that the whistleblower is not primarily motivated by the public interest but actually wants to have a go at a manager that they don't like. That does not mean you should not listen to the message. As long as a whistleblower has a reasonable belief that some wrongdoing is taking place or is likely to take place, why would you not want to investigate that and address that? So yes, that's really interesting. What's also interesting is that up until 10 years ago, all we heard about on our advice line was patient safety and financial misconduct. Whistleblowing was just these two things. And now 18% of the concerns that we hear about are about bullying, discrimination, and sexual harassment. And things that used to be seen as grievances involving just one individual worker now sit firmly in the public interest and are seen as whistleblowing. And that reflects the way society has changed. We've had #MeToo, Black Lives Matter, and we now talk about toxic work cultures in a way that we didn't 10 years ago.
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- Ellie:** Absolutely. And that's a really important point actually, Sybille, because a whistleblowing complaint is not always labelled as such, is it? So, it is essential that employers are clear about what amounts to a protected disclosure and what is solely a personal grievance.
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- Sybille:** Yes, if only because you're going to investigate differently and you're going to involve the reporter, the person who brings the concern, the grievance or the whistleblowing differently. In a grievance, usually the person bringing the grievance is very much the victim and they want, and they need a direct resolution for themselves and indeed the law in the UK gives them the right to appeal the grievance findings because it really concerns themselves. Whistleblowing is very different. In whistleblowing, the person raising the concern is more like a witness. They have no say in how the employer will respond to it. Indeed, they have no say in how the employer will or will not investigate it. But I think what we're seeing is that if you treat everything as a grievance, you're going to lose some crucial information, you're going to lose the trends. And that's how someone like Harvey Weinstein was able to continue to harass, sexually harass his employees for decades, because they were all dealt with individually, and no one saw well actually there's a systemic issue here. So, it's really important for organisations to look at things holistically whatever the label and maybe if it's a second or third grievance you've received on this particular issue, you need to also treat it as a whistleblowing matter. It may go wider than this particular employee was complaining about it, and you may want to, you know, firmly think of it as a whistleblowing issue as well.
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- Ellie:** Really goes back to the importance of sort of monitoring these complaints, whatever they're labelled as, so that you can spot those trends, spot toxic workplace conduct, misconduct. So, on that point of processes, how can employers assess if their procedures are fit for purpose when it comes to whistleblowing?
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- Sybille:** I'm going to say come and buy our benchmark and even better ask us to independently review that. So, we ask the question, you send us your documentations, we assess, we mark you according to the cutting-edge best practice and we give you actionable recommendations on how you can go even further. But what's also key is that you need to realise that you don't know what you don't know. You need to understand who's not speaking up, who's silent. And we know for instance, that the most vulnerable groups within an organisation find it much harder to speak up, partly because they have far more to lose. They already fear discrimination, they already fear that if they do raise something, no one will listen to them, no one will take it seriously. So, what can you do to empower them? Who's not speaking up? And who are you not listening to and just looking at the number of whistleblowing reports that you get is not the answer. You know, I'm always asked, "Oh, what's the right number of reports for an organisation our size in our sector? What's the magic number?" There's no magic number. If you have zero whistleblowing complaints, that could be great. It could indicate that actually there's no instance of wrongdoing or everything is solved informally at the line manager level. Or it can be extremely sinister. It can mean that people are so scared of even using the whistleblowing systems that they're not doing it. So, you really need to go under the skin of your arrangement. Otherwise, you're just taking a risk and hoping for the best that there's no problem.

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- Ellie:** And confidentiality is going to play a really important role, isn't it, when there's a whistleblowing complaint and can help reduce those chances of someone being victimised. But how can employers balance their duty of confidentiality towards the whistleblower whilst at the same time also ensuring the person or the people who are the subject of that report, how can they make sure that they are also afforded anonymity?
- Sybille:** That's a very difficult question and I don't have an easy answer, but we're going to publish a guide precisely about that, what three key confidentiality issues at the end of the month. And we have a masterclass on how to conduct a whistleblowing investigation and how to prevent victimisation that exposes things. But yes, confidentiality is absolutely key to whistleblowing investigations. And it's not just the confidentiality of the reporter, the person who's blowing the whistle. It's also the confidentiality of the other people that you're going to interview. The alleged wrongdoer, it's also the confidentiality relating to what actions you're going to take. We say it's key to give feedback to the whistleblower on what you've done to address the wrongdoing, because there's nothing more dispiriting than thinking, you know, you may have raised that, but nothing was ever done. But of course, you're not going to be able to tell everything. And if the whistleblowing results, for instance, in you dismissing someone else for gross misconduct, you're not going to trumpet dismissal. You usually don't trumpet gross misconduct dismissal to the wider world. So, you're going to be very restrained in what you can, and you can't tell the whistleblower. So yes, confidentiality and... and feedback are two very knotty issues.
- Ellie:** So can we finish, Sybille, by just looking at how employers can use whistleblowing reporting actually as a tool, a positive tool, to achieve their wider commercial aims?
- Sybille:** So, I'm a passionate believer in whistleblowing. To me, whistleblowing is about maximizing your opportunities, making your workforce more productive, more innovative, ensuring that you stay compliant and identify and navigate complex risks. It helps you to contain incidents. It helps you to understand the root causes of these incidents. And of course, it helps you to emerge stronger. It's also a key marketing tool to your customers, to your investors, even to your regulator. How can you demonstrate that you're complying with your obligation? Well, you know, especially if your regulator expects you to be much more proactive. They now say it's not enough to deal with a bad apple. You can't be the basket where the bad apple felt okay to be a bad apple. There's going to be a new law in the UK which will become effective in October this year that imposes a proactive duty on employers to prevent sexual harassment from happening in their workplaces. How are you going to manage that? How are you going to comply with that duty? Well, having an effective whistleblowing system is a key way to say, look, first of all, we're effectively deterring bad apples because they know that we're going to find out if they are bad apples and if it's still happening we can tell the judge we've put in place systems to mitigate the risk to identify the risk early and then to mitigate them so you know we're not guilty here and that that's called the reasonable steps defence so absolutely whistleblowing is key to all of that.
- Ellie:** And we'll look at how whistleblowing interacts with the obligations under the ESG pillar more closely in our next episode. But Sybille, thank you so much for guiding us through how employers should be approaching whistleblowing complaints. We've heard some brilliant practical takeaways to take on board because as we've seen and heard, whistleblowing is something that employers do need to engage with proactively if they are to avoid any adverse impact on their business, their reputation, and also their ability to attract and retain talent. And most importantly, we also know from the Post Office case that reporting wrongdoing, calling it out effectively and acting on it could in the most extreme cases also mean that lives and livelihoods are saved. So, thank you for joining us Sybille.
- Sybille:** Thank you, Ellie. It was a pleasure. And yes, whistleblowing saves lives. I've sent today a witness statement to the Lucy Letby inquiry, which asked us our views on whistleblowing in the NHS. That's a very tragic case where babies' lives could have been saved much earlier if whistleblowing had been more effective in the hospital.
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Ellie:

Absolutely, Sybille, a really tragic case that one, but as you say, really puts it into perspective as to why whistleblowing is so important. And in our final episode in our mini-series on this topic, I'm delighted to say Sybille will be joining us again on the Work Couch and she's going to take us through five key whistleblowing challenges for employers in 2024 and beyond. And we'll also explore potential changes to the law. So do look out for that one.

If you would like to revisit anything we discussed today, you can access transcripts of every episode of the Work Couch podcast by going to our website, www.rpc.co.uk/theworkcouch. Or if you have questions for me or Sybille, or perhaps you have suggestions of topics you'd like us to cover in a future episode of the Work Couch, please get in touch, we'd love to hear from you. You can email us at theworkcouch@rpc.co.uk. Thank you all for listening and we hope you'll join us again in two weeks.



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