



Professional Guide for Whistleblower Protection: HOW TO REDUCE OBSTACLES FOR CASEWORKERS AND IMPROVE OUTCOMES WHISTLEBLOWERS



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Fulfilling the Promise of Whistleblowing is an initiative of the Southeast Europe Coalition of Whistleblower Protection that assesses the effectiveness of whistleblower protection laws in six Western Balkan countries. The goal is to improve legal protections for citizens who report crime, corruption and public health dangers.

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Whistleblowing has proven to be among the most effective means to expose crime and corruption worldwide.

Whistleblowers perform an important, and in some instances, a life-saving public service. More fraud is exposed by whistleblowers globally than all other methods combined.

However, exposing hidden crimes and the evidence that can prove them is as dangerous as it is essential. Internationally, 80 percent of victimized whistleblowers lose their retaliation cases, and countless whistleblowers are fired, harassed, sued, prosecuted and physically attacked every year.

This guide explores many of the main obstacles whistleblower caseworkers face when investigating and resolving reports, and many of the risks that confront whistleblowers when exposing wrongdoing. Practical solutions and advice are offered, based on the first-hand experience of whistleblowing and anti-corruption professionals.

OBSTACLES FOR CASEWORKERS



Obstacles for Caseworkers

Due to the fundamentally sensitive nature of the work, people who handle whistleblower reports may be exposed to a variety of obstacles and risks. These problems can originate from supervisors and colleagues, disgruntled whistleblowers, and the general public. Additionally, risks stem from imprecise roles and procedures, and the typically bureaucratic structure of whistleblower systems.

These factors can cause delays, inaction and inconsistencies in handling, investigating and resolving cases. All of these can lead to poor case outcomes. Left unmitigated, these risks can harm caseworkers and whistleblowers alike, and can lower public trust in anti-corruption efforts.

(1) Structural Obstacles

Many whistleblower laws and policies do not mandate or describe specific duties for handling retaliation cases. There are often no clear tasks or responsibilities for investigating retaliation complaints, protecting people from retaliation, and compensating victimized whistleblowers for financial and other losses.

This can result in retaliation cases not being promptly or properly handled – or not handled at all. These gaps in laws could lead to inaction, inconsistency and delays. This harms whistleblowers, who can be fired, demoted or otherwise punished on a moment's notice. It also poses risks for caseworkers, if they are unable to fulfill the promise of a whistleblower law or policy.

Overcoming the Obstacles

Though they can be viewed as a hindrance, these gaps provide opportunities for caseworkers to develop their own customized policies and procedures for handling cases. Caseworkers can develop mechanisms to settle, solve and follow up on cases that fulfill the goals of whistleblower protection policies. These can include:

- appointing a director to supervise the entire whistleblower protection system and ensure it is functioning properly,
- establish procedures, roles and responsibilities for all staff members who handle retaliation complaints and cases,
- include specific steps to be taken to investigate retaliation complaints and protect people from retaliation,

- set up a case management system to track complaints, investigations and outcomes – including those from competent authorities that also receive reports and complaints,
- establish clear deadlines for concluding cases, and
- view laws and policies not as limiting factors but as enabling factors.

The success of any whistleblower system also depends on caseworkers having the necessary knowledge of the law and its goals. They also must be confident and comfortable with their role of assisting people in need and coming to their defense. A lack of awareness and skills may lead to inconsistent treatment of whistleblowers and vastly different approach in handling cases.

In order reduce these risks, organizations should:

- develop standardized protocols for handling retaliation complaints in accordance with international best practices,
- ensure all whistleblower contact people within institutions have the proper background for the role, and
- conduct thorough and regular training on whistleblower protection policies and practices.

Risks may be worsened if citizens lack awareness and understanding of whistleblower laws and do not have the expertise to understand it. Many laws are lengthy, and contain technical language and legalese. If citizens do not properly understand the law, this lowers the chance that organizations will be able to successfully protect them. Most people are not experts in interpreting legislation. They may make mistakes that disqualify them from preserving their rights.

To reduce these risks, caseworkers and organizations should:

- ensure complete, plain-spoken and updated information is publicly available; this information should avoid technical and legal terminology,
- provide accurate information to people who call with questions; do not “over-promise” and say they definitely will be protected and safe if they make a report,
- regularly provide information to public and private sector on the system’s mechanisms and goals, and
- conduct regular and ongoing outreach to broadcast and print news media.

(2) Perception Obstacles

Many people have negative perceptions of whistleblowers – that they have personal, professional or political agendas, they are acting out of vengeance, or they want attention or fame.

As a result of these stereotypes (which almost always are incorrect), whistleblower reports often are taken with a “grain of salt.” They can be viewed with skepticism by investigators who suspect the whistleblower has ulterior motives.

Because of this, many valid whistleblower reports have been ignored around the world – meaning criminals have eluded investigation and prosecution.

Overcoming the Obstacles

In order to compensate for this phenomenon, caseworkers and organizations should:

- ensure information and evidence provided by the whistleblower is accurate and complete,
- independently corroborate as much of the whistleblower's evidence as possible, so he or she is not be the only source of the information,
- ensure the report is referred to all relevant authorities,
- follow up with authorities on the progress and status of each case,
- stay in contact with the whistleblower in case additional evidence is needed, and
- inform relevant oversight institutions about shortcomings or delays in investigations.

(3) Expectation Obstacles

Anti-corruption reforms are meant to lift public confidence, not lower it. If the whistleblower protection system does not fulfill its stated purposes, this failure could spawn public backlash. The inability to meet citizens' expectations drives down public trust.

Critical, negative stories could appear in the media, with victimized whistleblowers publicly expressing their disappointment and anger. Media reports about whistleblowers who have had to endure lengthy court cases in order to exert their rights – especially if a whistleblower loses their case – very likely would cause citizens to lose trust in the system and the sitting government.

Overcoming the Obstacles

To reduce the chance of these events occurring, caseworkers should:

- be honest and open with people about expectations and possible outcomes, including the possibility that protection measures may not succeed,
- maintain regular, ongoing contact with the person about the status of the case,
- conclude the case as quickly as possible and inform the person about its conclusion so he/she can move on,
- clearly explain the entire whistleblower protection system to the public, so they understand its strengths and limitations, and
- inform the public about progress and achievements, including through media interviews.

(4) Professional Obstacles

Colleagues and managers may not agree with or be comfortable with a caseworker's approach in handling a case. It is not uncommon for cases to become controversial, emotional and a source of disagreement, even among close colleagues. Whistleblowing naturally brings out strong personal opinions about justice, free speech, courage, and the role of citizens in a democracy. Arguments are commonplace.

In particular, caseworkers can face significant opposition if they strongly believe a whistleblower should be protected, and if they take decisive actions to do so. Colleagues and managers may believe the caseworker has become an ally of the whistleblower, and even a whistleblower by proxy. They may be risk-averse and fear negative consequences if they align themselves with a whistleblowers.

Proactive caseworkers who “side with” whistleblowers can be viewed with the same negative perceptions and stereotypes that people hold toward whistleblowers.

Also, people inside or associated with the institution may be linked with the subject of the whistleblower report. These may people pressure or even threaten the caseworker to stop an investigation and “forget” about the case or cover it up. Here, the caseworker suffers some of the same types of reprisals that befall whistleblowers.

Overcoming the Obstacles

Any one of these very significant risks can derail an investigation and deprive whistleblowers of the protection to which they legally are entitled. To reduce these risks, caseworkers are advised to:

- shield themselves from inappropriate influence by strengthening their financial independence, control and management,
- strengthen professional standards throughout all institutions,
- monitor and correct improper influence on caseworkers,
- ensure all staff members are fully trained in the mechanisms and goals of whistleblower protection, and
- comply with all written policies, procedures, roles and responsibilities.

Obstacles for caseworkers	Example of obstacle	Mitigation measures
1. Unclear roles and authority in whistleblower protection policies	<p>A lack of specific roles and responsibilities may result in cases not being promptly or properly handled, or not handled at all. Such gaps could lead to inaction or inconsistency.</p>	<p>Caseworkers should:</p> <ul style="list-style-type: none"> ● clarify unambiguously what the policy requires and entitles them to do ● develop written procedures, roles and responsibilities for staff dealing with cases ● not treat the policy as a limiting factor but as an enabling factor
2. Lack of expertise, clarity and consistency	<p>Caseworkers may not understand their role or have the needed experience and skills to protect employees from retaliation. They may have vastly different approach in handling cases, leading to inconsistent treatment of whistleblowers.</p>	<p>Caseworkers should:</p> <ul style="list-style-type: none"> ● develop standardized protocols for handling retaliation complaints in accordance with international best practices ● ensure all caseworkers have the proper background for the role ● conduct thorough and regular training on whistleblower protection policies and practices

3. Inability to successfully protect reporting person from retaliation	Caseworkers usually do not have the legal authority to order an employee to be protected from retaliation. Victimized whistleblowers must file a lawsuit in court if they wish to be reinstated or compensated, which typically is costly and time-consuming.	Caseworkers should: <ul style="list-style-type: none">● fully inform whistleblowers of the abilities and limitations of the protection system● fully inform employers of what constitutes retaliation and what is not legally permitted● utilize all available resources and methods, including unofficial channels; do not give up
4. Lack of awareness and understanding of the whistleblower system	Citizens may not have the expertise to understand whistleblower laws and policies, which typically are lengthy and contain very technical language.	Caseworkers should: <ul style="list-style-type: none">● regularly provide information on the system's workings and goals to employees and the public● ensure complete, plain-spoken and updated information is on all websites● conduct regular and ongoing outreach to broadcast and print news media

5. Inability to successfully investigate report	Whistleblower reports often are taken with a “grain of salt” – meaning they can be viewed with skepticism by investigators who suspect the whistleblower has a personal or professional motive. Many instances of valid reports being ignored have been documented.	Caseworkers should: <ul style="list-style-type: none">● ensure the report of misconduct is referred to all relevant investigators and regulators● follow up with investigators and regulators on the progress and status of each case● inform relevant oversight institutions about shortcomings or delays in investigations
6. Pressure from colleagues and managers	Colleagues and managers may not agree with or be comfortable with a caseworker’s approach to handling a case, particularly if the caseworker strongly believes the whistleblower should be protected and takes decisive action to do so. It is not uncommon for whistleblower cases to become controversial and emotional, even among close colleagues.	Caseworkers should: <ul style="list-style-type: none">● ensure all staff is fully trained in the mechanisms and goals of whistleblower protection● comply with all written policies, procedures, roles and responsibilities● keep colleagues and managers continually informed about the progress of cases



<p>7. High-level political pressure</p>	<p>If an employee makes a report that affects or concerns a particular political party or prominent party member, pressure could be exerted on the caseworker or public institution handling the case. This outside influence could result in the case not being investigated and the whistleblower not being protected.</p>	<p>Caseworkers should:</p> <ul style="list-style-type: none"> ● ensure agency budgets, rules and procedures are set as independently as possible ● conduct training and awareness sessions for relevant Parliament member and ministries ● avoid discussing reports and cases with officials and other people outside of the agency
<p>8. Disappointment and anger from reporting person</p>	<p>The likelihood that employees will not be promptly protected from retaliation likely will surprise people who naturally may believe they are automatically protected. Many or most whistleblowers are vulnerable to reprisals, and expect prompt help in their time of need.</p>	<p>Caseworkers should:</p> <ul style="list-style-type: none"> ● • be honest and open with the reporting person about expectations and possible outcomes ● • maintain regular, ongoing contact with the person about the status of the case ● • conclude the case as promptly as possible and inform the person he/she can move on

RISKS FOR WHISTLEBLOWERS



Risks for Whistleblowers

When an employee reports crime or corruption being committed at the public institution or private company where they work, the person very likely will face some type of retaliation. It could be mild, such as being excluded from meetings and training sessions. It could be moderate, such as negative performance reviews and being denied a promotion. It could be significant, such as dismissal, legal action and blacklisting.

It is essential for caseworkers to understand, anticipate and respond to these risks. Risk never can be removed from the equation, but caseworkers can advise and assist whistleblowers in taking important and sometimes necessary steps to reduce it.

(1) Career Risks

By far, the most serious risk to whistleblowers is retaliation at work. Anyone who is under management control can face negative consequence after reporting misconduct at their company or organization. Beyond full-time employees, this includes contractors, temporary workers, interns, trainers and volunteers.

By reporting misconduct either within or outside the workplace, an employee poses a threat not only to the person or people responsible for the misconduct, but also potentially to the organization or company itself. Bona fide whistleblower reports routinely lead to investigations by public authorities, enforcement actions and even prosecutions. The public often views whistleblowers as heroes, but within their workplace they can be seen as the enemy.

An employee who is not careful or discreet about collecting evidence of misconduct and passing it on to other parties runs the real risk of prompt and ongoing retaliation by managers and colleagues. This frequently includes dismissal, suspension, demotion, harassment, bullying, ostracism, poor performance reviews, denial of benefits and training, and reduced duties and responsibilities. They also can be hit with lawsuits and criminal complaints.

Overcoming the Risks

Employees considering making a report, or who already have made a report, should take any and all measures to protect themselves from retaliation and threats. In addition to being highly discreet in collecting evidence and making a report, employees should not draw any undue attention to themselves that can give managers a reason to dismiss or take other action against them.

Here are some steps employees can take that may reduce retaliation threats:

- continue to perform well at work, arrive and leave on time, do not take excessive sick days, and fully document achievements and work record,
- review performance evaluations and ensure they are accurate; correct any inaccuracies,

- do not tell colleagues and managers about having knowledge of misconduct, considering making a report, or having made a report outside the workplace,
- do not raise “petty” concerns or have disagreements with colleagues and managers, and
- do not treat managers and colleagues any differently; be a good and reliable team player.

In order to avoid mistakes, whistleblowers should be advised to:

- carefully read and fully understand the whistleblower protection law before even considering making a report,
- weigh all professional and personal risks before making a report; ask themselves: “Is it worth it?”,
- strongly consider giving the evidence of misconduct – ideally anonymously – to an NGO, an investigative journalist, attorney or other trusted professional, and
- have a confidential conversation with a whistleblower protection official immediately upon suspecting retaliation.

Another common risk is intentional reputational damage caused to a whistleblower's career. Known as "blacklisting," managers and colleagues frequently seek vengeance by spreading negative messages about a whistleblower throughout their industry, making it more difficult for the person to find a new job.

In order to protect themselves, whistleblowers should be advised to:

- not discuss the situation with any other companies or organizations, especially those within their field or profession,
- not post anything about the whistleblowing situation online or on social media, in particular professional platforms,
- fully document their achievements and work record at their current job, so that future employers will not be swayed by inaccurate information from vengeful former employers, and
- not discuss the situation at their new workplace; if they are asked why they left their previous job, they should cite generic professional or personal reasons.

(2) Legal Risks

The second-highest risk to whistleblowers is legal consequences. As more whistleblower laws are passed and more people are coming forward to report crime and corruption, they are facing more legal jeopardy. These reprisals can take on many forms and come in unexpected ways, and whistleblowers can be confronted with several legal problems simultaneously.

The reality is that the first reaction to a whistleblower disclosure often is not, “What is the misconduct?” Rather, it is, “Who leaked this and why?” The focus is more on the messenger, rather than the message. Whistleblowers rarely are prepared to cope with this misplaced attention, which has the double effect of syphoning attention away from the alleged perpetrator and placing under the microscope an honest, well-meaning citizen who is just doing their civic duty.

A whistleblower may be sued for libel or defamation, regardless of whether the information he or she released is false. Even if the case is frivolous and likely to be thrown out in court, simply being sued typically is costly and time-consuming. A person also can face legal action – whether civil suits or criminal charges – for violating a confidentiality clause in their employment contract, or releasing proprietary or trade information, official secrets or classified information.

Overcoming the Risks

To limit these legal risks, whistleblowers should be advised to:

- speak with a lawyer who has experience in whistleblower cases and law about the legal risks before making any decisions regarding a disclosure,
- consider giving the information and evidence to an intermediary, such as an attorney, an NGO or a journalist specializing in corruption investigations – ideally anonymously; anonymity by far is the best protection in any case,
- never post anything on social media or anywhere else online about the evidence you possess,
- do not report misconduct or provide evidence to public authorities without first understanding their your rights; being in the possession of “banned,” sensitive information can result in the law turning against the whistleblower, and
- do not tell anyone about how they obtained or received the evidence of wrongdoing.

In order to protect their identity, whistleblowers should:

- not discuss the situation with anyone outside of their family and close circle of friends,
- not post anything online about being a whistleblower,
- not forward emails, documents or any other information to anyone that contains their name or identifying information; be careful of metadata that might identify them,
- not confide in anyone who is not legally or professionally obligated to protect identity, and
- strongly consider reporting misconduct anonymously via secure communication channels.

Risks may arise if a person makes a report that does not lead to an investigation. Whistleblower officials may tie their decision whether to grant protection to the quality of a person's disclosure. Some judges have ruled against whistleblowers in retaliation cases if their disclosure did not lead to a formal investigation, enforcement action or prosecution.

Their misguided logic is: “If it was not a real case, you are not a real whistleblower.” This ignores the predominate “reasonable belief” standard.

Another risk is giving evidence to authorities that the whistleblower may not have obtained properly or legally, or possessing information the whistleblower is not authorized to have. Prosecutors could turn around and investigate the whistleblower and potentially file charges for illegal possession or transmittal of the information. Privacy and data protection violations also are a risk.

Because of the scrutiny to which whistleblowers are subject, officials – even subconsciously – may not think a person is “entitled” to protection if their disclosure is not deemed “good enough.”

In order to reduce these risks, whistleblowers should:

- not directly give evidence to regulators, investigators or prosecutors; they should use a trusted intermediary to handle the evidence and serve as a buffer,
- collect the best available information and evidence about the misconduct,
- not embellish, be untruthful or be selective in presenting information about the misconduct,
- not force the issue with investigators by making unrealistic or aggressive demands, or aggressively challenging their findings, and
- not become an investigator themselves and undertake a personal crusade to find the truth.

(3) Personal Risks

Despite growing support from the public, many if not most whistleblowers continue to suffer severe and long-lasting financial and psychological hardship if they do not exercise caution during their case. Understandably and predictably, this growing support emboldens many people to come forward and report corruption.

This public support, however, does not translate into direct assistance for victimized whistleblowers. It may supply a temporary tonic, but after the initial thrill and perhaps some media coverage dissipate, the whistleblower is left to deal with the consequences alone. This marks the beginning of abandonment. The person may have expected a stronger and longer-lasting response – perhaps even some type of “thanks” – only to realize that most of the public has a short attention span. Thus, there is a risk of disappointment that their brave act was not properly acknowledged.

Overcoming the Risks

It is essential for people to understand that doing the right thing for society does not mean they will be protected from backlash. The opposite is more likely to happen: becoming a target of backlash. Would-be whistleblowers need to be prepared for what very possibly will be coming their way: mockery, derision and isolation.

People should be strongly advised to:

- discuss the situation with family and close friends before making any decisions about reporting anything to anyone,
- strongly consider not making a report if their immediate family is not fully supportive,
- ensure they have adequate financial resources in place if they make a report and their managers and colleagues become aware of it,
- not “become an investigator” themselves and engage in a risky and personally costly crusade to uncover the truth, and
- not have unrealistic expectations of impact of their report.

Another common and serious risk is unwanted media coverage and public exposure. Because of the pervasiveness of media, including independent online journalists and bloggers, it can be difficult for whistleblowers to stay anonymous. Leaks are commonplace, and gossip and rumors easily can reach the media.

Even when a whistleblower intentionally goes public, journalists are not always ethical or accurate. They tend to exploit the vulnerability of people who perhaps have never been in the public eye, and prey on their naiveté. Once they are labeled a “whistleblower” online – where the story never goes away – their reputation is damaged in the eyes of colleagues, friends and potential employers.

To avoid unwanted or inaccurate media coverage, a whistleblower should be advised to:

- not post anything about their case or the evidence online, anonymously or otherwise,
- not speak with any journalist without first obtaining expert advice and without researching the journalist's reputation and track record,
- not talk to journalists even if they say the conversation is “off the record”: this can be a trick, and
- not discuss the situation with anyone outside of family and close circle of friends.

Another source of risk and disappointment is the fact that, even when they do pursue official protection measures, a vast majority of whistleblowers do not win. Losing a retaliation case can be financially and personally costly. The notion of being punished for doing the right thing – especially when public officials strongly encourage people to come forward with corruption reports – can cause anger, abandonment,

disillusionment, and a distrust of the legal system and government in general.

To reduce these risks, people should be advised to:

- speak with an attorney or NGO that has expert-level knowledge of whistleblowing laws and issues,
- fully understand the limitations of the whistleblower protection system,
- recognize when their case has reached a conclusion and take concrete steps to move on from it, and
- try not to “change the world.”

Risks for whistleblowers	Example of risk	Mitigation measures
1. Dismissal, suspension, demotion, harassment, other workplace reprisals	<p>Not being careful or discreet about reporting misconduct at work can result in prompt and ongoing retaliation by managers and colleagues, resulting in dismissal.</p>	<p>Whistleblowers should:</p> <ul style="list-style-type: none"> • continue to perform well at work and fully document his/her achievements and record • not tell colleagues and managers about having knowledge of misconduct / making a report • not raise “petty” concerns or have disagreements with colleagues and managers
2. Unrealistic expectations of rapid and comprehensive investigation	<p>An employee may believe authorities will promptly and thoroughly investigate his or her report of misconduct, without realizing many whistleblower laws do not grant authorities any additional powers or tools.</p>	<p>Whistleblowers should:</p> <ul style="list-style-type: none"> • collect and preserve as much information and evidence about the misconduct as possible • not embellish, be untruthful or be selective in presenting information about the misconduct • not violate any laws or employment agreements while obtaining information and evidence

3. Unrealistic expectations of confidentiality or anonymity	People who are not authorized to have personal and professional information about a whistleblower may obtain this information through nefarious means. This information can be leaked to the media or used to pressure or blackmail the whistleblower.	Whistleblowers should: <ul style="list-style-type: none">• not confide in anyone who is not legally or professionally obligated to protect identity• not discuss the situation with anyone outside of family and close circle of friends• strongly consider reporting misconduct anonymously via secure communication channels
4. Legal consequences (civil and criminal action)	Because many whistleblower laws and policies do not include protection from civil and criminal action, a person can be sued and/or prosecuted after making a report. Many laws do not ban such actions and lack penalties for vexatious lawsuits or prosecution.	Whistleblowers should: <ul style="list-style-type: none">• consider giving the information and evidence to an intermediary, ideally anonymously• speak with an experienced lawyer about legal risks before making any decisions• not report misconduct to public authorities without first understanding legal rights

5. Damage to career (“blacklisting”)	Managers frequently spread negative messages about a whistleblower throughout their industry, making it more difficult for the person to find a new job.	Whistleblowers should: <ul style="list-style-type: none">• not discuss the situation with any other companies or organizations in his/her field• fully document achievements, employment record and performance reviews at current job• not discuss the situation if he/she gets a new job
6. Financial and psychological hardship	A whistleblower who is fired after making a report (which often happens quickly) may experience financial problems and difficulties finding a new job, which can cause stress, depression and long-lasting psychological harm similar to PTSD. Family members and friends may not express empathy.	Whistleblowers should: <ul style="list-style-type: none">• discuss the situation with family and close friends before making any decisions• ensure adequate financial resources are in place in case dismissal or other reprisals occur• not “become an investigator” and have unrealistic expectations of impact of the report

7. Unwanted media coverage and public exposure	It can be difficult for whistleblowers to stay anonymous, as leaks are commonplace. Gossip and rumors easily can reach the media; even when a whistleblower intentionally goes public, journalists are not always ethical or accurate.	Whistleblowers should: <ul style="list-style-type: none">• not post anything about the situation online, including social media• not speak with any journalists without first obtaining expert advice• not discuss the situation with anyone outside of family and close circle of friends
8. Disappointment	Worldwide, a vast majority of whistleblowers lose their retaliation cases in court or before administrative agencies. Losing a case can be financially costly and cause anger, abandonment, disillusionment, and a distrust of the legal system and government in general.	Whistleblowers should: <ul style="list-style-type: none">• understand and accept the limitations of the whistleblower protection system• recognize when the case has concluded and take concrete steps to move on from it• not try to “change the world”





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