

Human Behaviours Preventing WHISTLEBLOWING and Behavioural Interventions to Encourage COURAGEOUS CONVERSATIONS

By Wendy Addison

April 2015

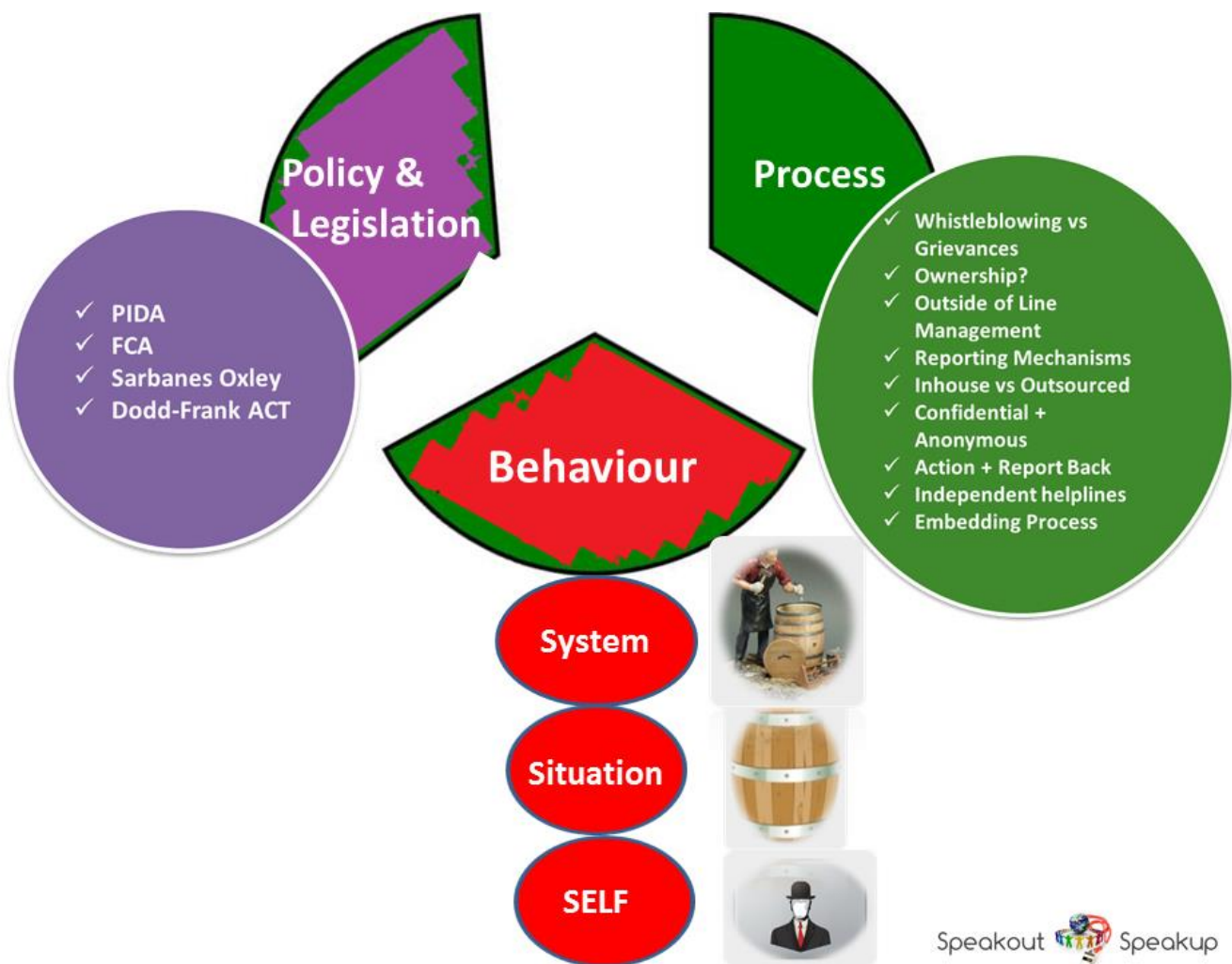
Speakout



Speakup

The BARRIERS and LEVERS through which HUMAN BEHAVIOUR is able to EFFECT CHANGE in the WHISTLEBLOWING arena

The Three-Pronged Approach to Whistleblowing



Speakout  Speakup

Watch 1minute video here: <https://www.youtube.com/watch?v=9Pinnjnw5pM>



Where are we?

1. Legislative Policy
2. Process and Procedure
3. Human Behaviour



1. Legislative Policy

A 'successful' whistleblower myself, I currently work with whistleblowers who have blown the whistle on misconduct and who have followed due process under PIDA. They experience the legislative policy as a blunt instrument or as Professor David Lewis names it, a 'Cardboard Shield'. This applies to the two areas of;

- a) The outcome for Individuals who blow the whistle.
- b) The outcome for the wrongdoer and the organisation.

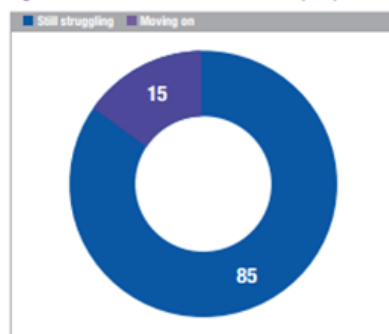
FINAL OUTCOMES: WHISTLEBLOWER and WRONGDOER

Table 6.1 Final outcomes for the whistleblower

Still struggling	53 (85%)
Moved on	9 (15%)

Our case files included this information for 62 cases (N=62)

Fig 6.1 Final outcome for the whistleblower (in %)



The overwhelming majority of whistleblowers are still struggling, this includes where they have not received feedback, are unhappy with the investigation, continue to receive detrimental treatment at work or where they have lost their jobs are still trying to see the concern addressed. It is important to note however, this is based on a small percentage of our sample.

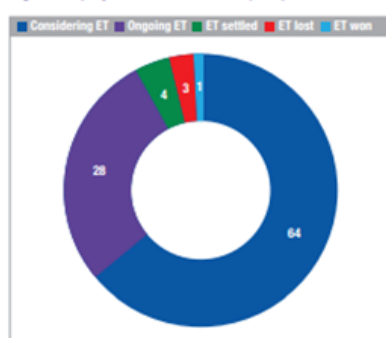
Table 6.2 Employment Tribunal status

Considering ET	ET ongoing	ET settled	ET lost	ET won
142 (54%)	63 (28%)	8 (4%)	7 (3%)	2 (1%)

b. How many individuals make a claim?

For the cases that lead to an Employment Tribunal (ET) and where the whistleblower was still in contact with us, the case files would include information on the ET status. This was the case in 222 cases (N=222).

Fig 6.2 Employment Tribunal status (in %)



Of our sample, 222 individuals mentioned taking a claim to an ET. The numbers are much higher than other final outcomes. The majority of those we speak to at the end of their journey are considering taking a claim. This denotes the final outcome for the individual. The number could be higher for two reasons. First, the individual is acutely aware of the outcome of their situation, whereas this may not be the case for the outcome of the concern or the wrongdoer.

c. For the wrongdoer

Table 6.3 Outcomes for the wrongdoer

No change	11 (38%)
Warning	2 (7%)
Transferred	2 (7%)
Resigned	2 (7%)
Dismissed	12 (41%)

Our case files included information on this for 29 cases (N=29)

The outcomes in this section are mixed. 41% of our sample (N=29) said that the wrongdoer was dismissed and 38% said that nothing changed. However the data is based on small numbers.

d. For the wrongdoing

Table 6.4 Outcomes for the wrongdoing

Unchanged	15 (38%)
Reduced	2 (5%)
Temporarily stopped	1 (3%)
Stopped	21 (54%)

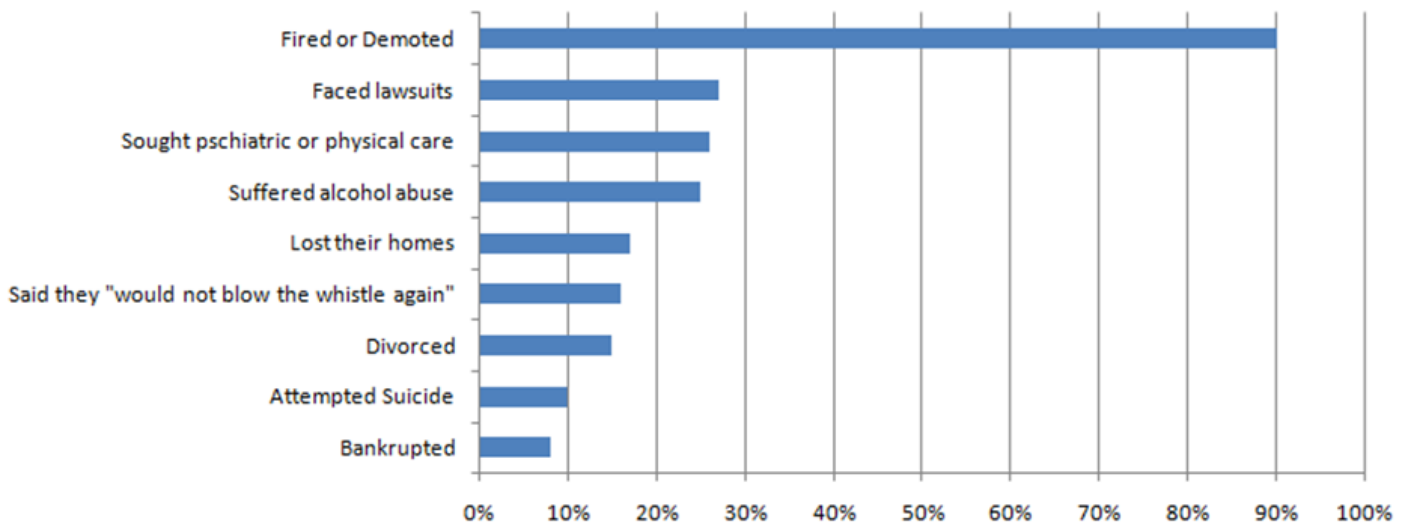
Our case files included information on this for 39 cases (N=39)

Where we know the final outcome of the wrongdoing, it had stopped in 54% but remained unchanged in 38% of cases. Again, the data is based on small numbers.

Source: <http://www.pcaw.org.uk/files/Whistleblowing%20-%20the%20inside%20story%20FINAL.pdf>

a) Outcomes for Whistleblowers

Surveyed Consequences of Whistleblowing



UK House of Lords March 2015: Lord Phillips on Whistleblowing



UDS] Enterprise and Employment Bill 696

to Speak Up and published only last month. It is bizarre that they confine the provisions in the amendment to the National Health Service, for reasons which have been touched on by the two Peers who have already spoken. The need for the protection of Amendment 58A is universal.

I should perhaps say that in my long legal career I have dealt with a number of whistleblowing cases, and was charged back in the 1980s with trying to register a charity which had as its principal purpose the support of whistleblowers. That was successful—not, I may say, without vast and prolonged effort, because at first the Charity Commission viewed the very idea as bizarre. In 1993, the charity Public Concern at Work was formed and is still operating with huge effect. All of us here tonight are grateful for the work that it has done and the information which it has provided to us under the leadership of Cathy James. Its work leads it even now—or perhaps more than ever now—to advise about 800 people a year who have personal, direct, often poignant problems in relation to their employment and their attempt to try to get those who employ them to take seriously malfeasance—sometimes corruption, sometimes wilful and terrible illegality.

Public Concern at Work is, as I said, better informed than any other agency in this country as to just what whistleblowers have to go through. Our point is that whistleblowers are not some little sideshow. If we are serious about attacking the widespread and growing corruption and criminality that, I fear, infects so much of what we value in this country, we have to support whistleblowers. Frankly, they are the only people who can uncover criminality at source, often at a time when, if it can be dealt with, doing so will save vast loss and suffering. One has to look only at the collapse of the financial markets of the world, led by the City of London in 2008, to realise just what terrible losses we have all suffered—trillions rather than billions—by reason of the fact that there were virtually no whistleblowers from within the City of London, or indeed the other financial centres, who were able to get the facts relating to what was going on in their entities to the authorities in time for them to take action.

Again, I have a certain amount of personal experience of this. One thinks, for example, of Paul Moore of HBOS. He blew the whistle, except that he blew the whistle to his own board, saying openly and clearly that the measures taken in that bank to balance risk and opportunity were unsustainable and were leading the bank, and had led the bank, into the most dangerous of situations. He not only got no success when he took this matter up the scale in the bank but has not had a job in the City of London since then—we are talking about 2007 or 2008—despite his huge experience as a former partner at KPMG and senior financial officer at HBOS.

5.45 pm

I can think of another person. Wendy Addison was one of the youngest female chief executives of a major corporation in South Africa. She found that the two owners of the company were engaging in fraudulent activity and confronted them with it. They sacked her and because it was South Africa they were able to square the police and the authorities. She had to leave

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in danger of her life and came here only to find that the whispering machine that operates, I fear, within financial markets had put her name on the blacklist in London. Despite being a qualified accountant and a very senior and successful executive she failed, over 17 years, to get a job. She was driven, because she had a young son, to live on the streets, begging.

Noble Lords who know about whistleblowing, of which there is far too little, will have to agree with this finding of Robert Francis QC, which appears in the letter he wrote to the Secretary of State for Health and included in his report. It says that in the course of inquiries within the health service,

"only 30% of those who raised a concern"—namely, whistleblowers—"felt unsafe afterwards. Of those who had not raised a concern, 18% expressed a lack of trust in the system as a reason, and 15% named fear of victimisation".

This is not a story confined to the national health service. It is, I suspect, to be found in the majority of large entities in this country. The larger the entity or corporation becomes, the more impersonal, the more distant, the more depersonalised and bureaucratic. The reason we feel so strongly about this set of amendments is because they build on changes that I commend the Government for having introduced into the Bill. They build on sound reforms that are included now, by amendment, but extend them to the whole business sector, and not just the business sector because some of these things, I fear, go on in the public sector. We only have to think of child victimisation among many other sectors.

Finally, the issue of public trust seems to me to be perhaps the greatest issue of our times. It has steadily diminished, let us be honest about it, in virtually every quarter of our national life, including, I fear, in this place. Frankly, public trust is to society what oxygen is to our bodies; we cannot do without it. I make no pretence that the group of amendments we are debating will solve the problem. The only thing that will solve the problems we are grappling with—grappling is the word—is the restoration of good values and a remoralisation of our society. However, what I and my colleagues are saying is that part of that—a small but crucial part—is to give protection to those extraordinarily brave people who will speak out when faced with a corrupt culture in the institution or company in which they work. They must be given fair protection and frankly, if we do not give it to them we are encouraging the sort of conduct that we all utterly deplore and which is utterly self-defeating and self-destructive. I hope that my noble friend the Minister will look kindly on these amendments.

Lord Hunt of Kings Heath (Lab): My Lords, this is a very important group of amendments. The government amendment, which the Opposition are supporting, clearly comes on the back of the Francis report on Mid Staffordshire. I also point noble Lords to the very recent report by Dr Bill Kirkup and an expert panel of members, who looked into maternal care at the University Hospitals of Morecambe Bay NHS Foundation Trust.

That report, as the Statement which we had last week in this House said,

"found 20 instances of significant or major failures of care at Furness General Hospital, associated with three maternal deaths

and the deaths of 16 babies at or shortly after birth. It concludes that different clinical care would have been expected to prevent the death of one mother and 11 babies".

It described, "major failures at almost every level... mistakes by midwives and doctors, a failure to investigate and learn from those mistakes, and repeated failures to be honest with patients and families, including the possible destruction of medical notes. The report says that the dysfunctional nature of the maternity unit should have become obvious in early 2009, but regulated bodies", including the north-west strategic health authority, primary care trusts, the CQC, Monitor and the PHSO—that is, the ombudsman,

"failed to work together and missed numerous opportunities to address the issue".—[Official Report, 3/3/15, cols. 158-59.]

For the purpose of our debate, the report also showed that the drive for a transparent and open culture in the NHS has some way to go. Notes were destroyed and mistakes were covered up. Dr Kirkup's assessment is that it was,

"possibly because of a defensive culture where the individuals involved thought they would lose their jobs if they were discovered to have been responsible for a death".—[Official Report, 3/3/15, col. 160.]

It seems from Francis, the Morecambe Bay report and our general experience of the NHS that there is a pressing need for a transparent and open culture, in which the protection of whistleblowers is an important element.

Ministers in this Government and the previous Government have from time to time issued various edicts about the importance of the protection of whistleblowers. There has been guidance on this, but it is clear that a whole swathe of staff in the NHS still do not feel confident about raising concerns on patient care. That is why the Opposition very much support government Amendment 58A but I, like other noble Lords, do not think that we can stop at the NHS. That is why I also support the amendments tabled by my noble friend Lord Wills and the noble Lords, Lord Low and Lord Phillips.

As my noble friend Lord Wills said, there are "significant gaps" and loopholes, "in the current provisions for those making disclosures in the public interest".—[Official Report, 26/1/15, col. GCI.]

While we have at least had a lot of debates about failures in the NHS, one has only to think of the issues following the Hillsborough football disaster, as my noble friend said in Committee, more recently in Rotherham with child abuse and then recently in Oxfordshire, again with child abuse. I am not sure whether this has been corroborated by an independent inquiry, but the point has certainly been put that a junior member of staff in Oxford City Council was subject to discouragement for raising concerns because of approaches made by Oxfordshire County Council, which was responsible for childcare, to senior officials in Oxford City Council to try to stop this person raising what seemed to be eminently sensible concerns about the way that these cases were being dealt with—or not being dealt with—in Oxfordshire.

The noble Lord, Lord Phillips, mentioned the banking world and my noble friend Lord Wills mentioned the construction industry, which is a great example. If a construction worker raises health and safety concerns, there are very good companies in the construction world where they are taken seriously. Overall, my noble friend knows that there has been considerable improvement but

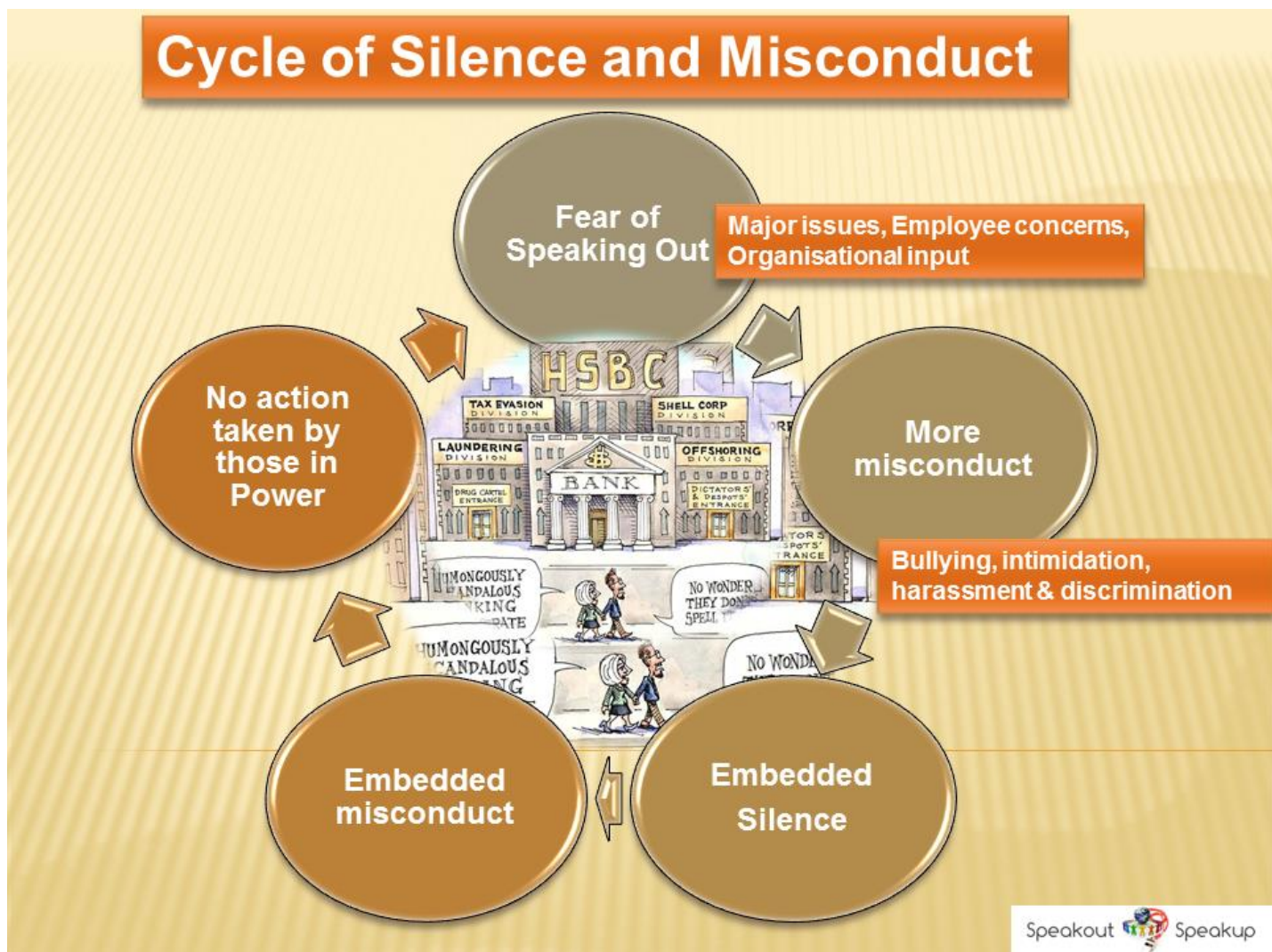
Read the House of Lords Report online here: <http://www.theyworkforyou.com/lords/?id=2015-03-11a.663.2#g695.0>

b) Outcomes for the Wrongdoer, Organisations and Society

- PIDA does not make it mandatory for employers to introduce internal disclosure procedures in the workplace
- The provisions of PIDA leave much open to interpretation
- Inadequate recourse for reprisals
- Wrongdoer may be dismissed but often remains employed with a warning
- Length of time for investigation, EAT and outcome is often many years, often without a salary or earnings
- There are no criminal sanctions taken against any wrongdoer or the organisation; this applies to both victimisation and reprisals on the whistleblower in addition to the original, often illegal and/or criminal misconduct.
- Whistleblower is required to make an exemplary claim over and above damages as a way to 'make the organisation pay'. These claims are not significant enough to impact organisational change.
- Misconduct may continue.
- PIDA lies under Labour laws therefore labour laws drive the legal process

Watch UK Parliamentary Accounts Committee on Whistleblowing March 2014

<http://www.parliamentlive.tv/Event/Index/7d285e74-9371-4441-8411-9bca742fbed7>







3. Human Behaviour

‘Shaping policy more closely around our inbuilt responses to the world offers a potentially powerful way to improve individual wellbeing and social welfare’ MINDSPACE report.

Read full report here <http://www.instituteforgovernment.org.uk/sites/default/files/publications/MINDSPACE.pdf>

Messenger	we are heavily influenced by who communicates information
Incentives	our responses to incentives are shaped by predictable mental shortcuts such as strongly avoiding losses
Norms	we are strongly influenced by what others do
Defaults	we ‘go with the flow’ of pre-set options
Salience	our attention is drawn to what is novel and seems relevant to us
Priming	our acts are often influenced by sub-conscious cues
Affect	our emotional associations can powerfully shape our actions
Commitments	we seek to be consistent with our public promises, and reciprocate acts
Ego	we act in ways that make us feel better about ourselves

‘Workplaces in general have paid a lot of attention to process and much less to people’ DeLoitte University Press

*There is an inherent uncertainty about the impact of policy in a world in which network effects are important, which no amount of cleverness can overcome...This is not a comfortable world for the policymaker. But it is how large sections of the world really are. Ignoring network effects means that we carry on with the same model, spending vast amounts of money, with at best a rather hit-or-miss success rate as the evidence of the past sixty years has shown.*⁶⁴

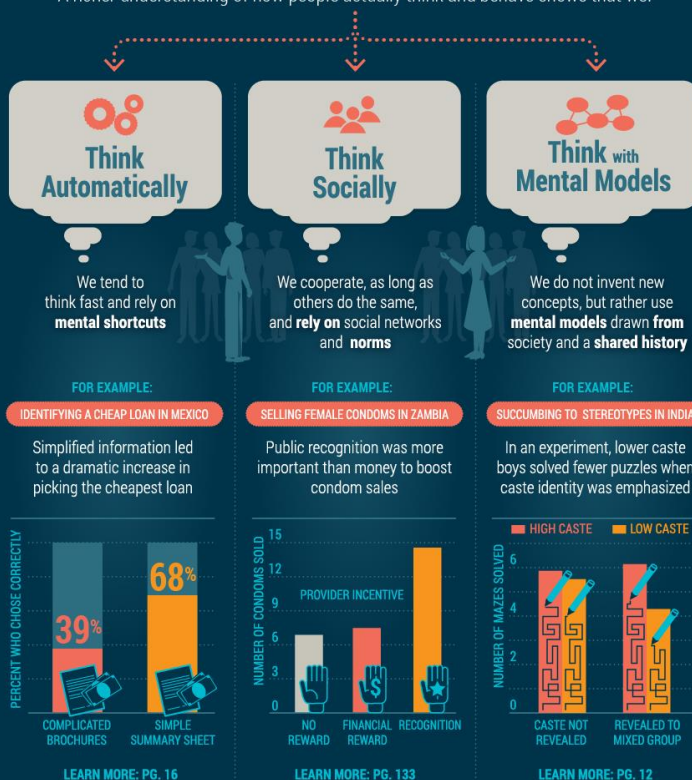
MIND, SOCIETY, AND BEHAVIOR

ECONOMISTS TYPICALLY ASSUME PEOPLE MAKE RATIONAL CHOICES



THESE ASSUMPTIONS ARE SOMETIMES NOT ENOUGH

A richer understanding of how people actually think and behave shows that we:



POLICIES WITH A RICHER VIEW OF HUMAN BEHAVIOR

A fuller understanding of human behavior makes for better policy

SOCIAL NETWORKS

IN INDIA, defaults on group microfinance loans were **3** times less likely when borrowers met on a weekly (compared to monthly) basis



TIMING FUNDS

IN COLOMBIA, cash transfers were disbursed when school enrollment decisions were being made. Future enrollments went up, and current attendance stayed the same.

40%
PRESCRIPTION

53%
WITH REMINDER

REMINDERS

IN KENYA, weekly text messages improved rate of HIV drug adherence from **40%** up to **53%**

FOR FULL REPORT, VISIT worldbank.org/wdr2015



WORLD BANK GROUP

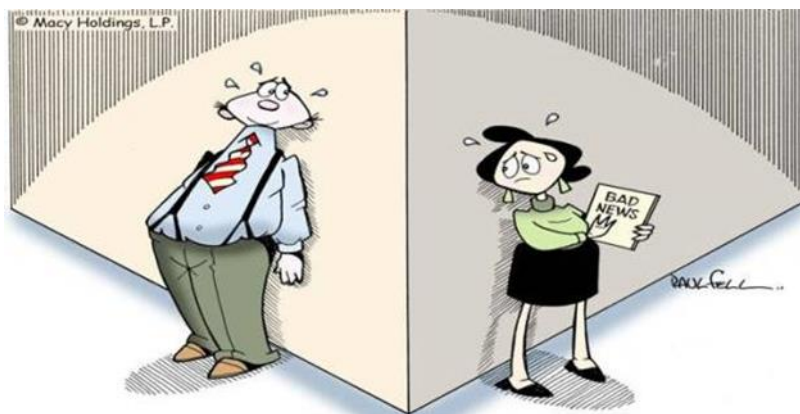
Source: World Development Report 2015: Mind, Society and Behavior

<http://www.worldbank.org/content/dam/Worldbank/Publications/WDR/WDR%202015/WDR-2015-Full-Report.pdf> and the OECD conference on the use of behavioural insights in policy, March 2015, I propose the following three barriers and levers through which human behaviour is able to effect change in the whistleblowing arena:



SELF

- Individual characteristics will determine, in part, the habits, skills and abilities of employees, which in turn, will affect the likelihood of engaging in behaviours such as whistleblowing.
- There are many surveys with outcomes indicating that 70-80% of participants are **willing to** blow the whistle on misconduct. Why is it then that the proportion of individuals actually blowing the whistle is far lower, closer to 40-50%? I propose that there is a **difference between being willing and being able**. Research suggests that what most people think should happen when an ethical challenge looms is inconsistent with what they actually do. In challenging situations the 'should' self dominates – we should speak out, should be just, should assert our values only to discover that when the time to act comes, the 'want' self dominates – I don't want to look like a fool, I don't want to lose my job, I don't want to be alone.
- I have co designed a psychometric online survey with Isobel C Botero, a Ph.D. in Communication, <http://uky.academia.edu/IsobelCBotero> The survey is called **Voiceability** and is designed to measure and feedback the likelihood that a participant will speak out and to whom. (Awaiting funding)
- Managerial self-efficacy leading to an aversion to negative input via whistleblowing. This results in managers becoming gate keepers of problematic situations.
- Individual self-efficacy
- Individual sense of utility
- Self-conscious emotions of fear, guilt, shame
- Humans have an innate human tendency to favour false positives especially in emotional, ambiguous situations with higher power others.





SITUATION

What social psychology has given to an understanding of human nature is the discovery that forces larger than ourselves determine our mental life and our actions—that chief among these forces . . . [is] the power of the social situation.

—Mahzarin R. Banaji¹

- Organisational Culture - based upon what 'should' an individual do, not to what an individual 'can' do.
- Organisational Climate - shared perceptions and meanings that arise from employees' interactions with one another.
- Organisational norms supporting voice versus keeping silent:
 - Favourable contexts: top management's willingness to listen, a supportive culture, organisation facing economic and competitive pressures and ongoing changes in the organisation.
 - Unfavourable contexts: fear of negative consequences, organisational uncertainty, a conservative organisational culture and organisational stressors.
- Identifying the areas of Whistleblowing/Voice focus
 - Employee Issues
 - Major Issues
 - Organisational Input
- Group Identification versus Individual Differentiation
 - Influence of the Group/Team: 'When people in groups coordinate their behaviour, individuals often end up doing and saying things that violate their personal beliefs, desires, and moral standards. In the service of being a good group member or facilitating the group's goals, people will misrepresent their opinions and perceptions (Asch, 1951), drink more alcohol than they want to (pluralistic ignorance; Prentice & Miller, 1993), suppress dissenting ideas (Janis, 1972), and in some cases, harm another person (Milgram, 1963). Said another way, cooperating in the short-term can have long-term negative consequences for individuals and the groups of which they are a part.'
 - Cooperative behaviours are socially and economically beneficial across a large variety of contexts; however, universal prescriptions for such behaviours may have unintended negative effects, whereas the ability to offer dissent via a candid conversation is often requisite for promoting progress.
- Understanding the Victimization and Expulsion of Whistleblowers from a Group/Organisation/Society
 - The Perversity of Obedience
 - Pre-emptive Rejection
 - Self-Threat- Shame and guilt
 - Existential freedom
- Conflict of Interest

Our judgments may be distorted or biased in ways of which we are unaware. Professionals are pulled in two directions, torn between personal gain and the public good. And the sad news is that when faced with COIs individuals sometimes end up going the self-interested route, motivated to see themselves in a certain way - and this can have undesirable outcomes for society.



Individuals have a stake not only in the status and circumstances of their groups but also in the stability and continuation of the overall system.

When individuals, such as whistleblowers seek to cross what has been deemed an impermeable boundary, they find themselves in opposition to the larger social system, which quite literally provides them with nowhere else to go. Social change requires a type of dissent by a group such as whistleblowers against the larger social system.

Importantly, however, mobilising a group to take collective action may first require dissent by individuals within the group to alter other members' perceptions regarding the permeability of group boundaries and the legitimacy of the current social system that are inimical to social change attempts (see Taylor & McKirnan, 1984). This dissent, via finding the courage to converse in a challenging situation can shift systemic narratives, behaviours and outcomes.



What Next?

Courageous and effective leadership at work usually comes down to the ability to have courageous conversations of one kind or another with colleagues. According to extensive research by Carl Larsen, one of the primary predictors of the success of a work team is their ability to have candid conversations. However, as outlined above there are many pressures that keep us from speaking up for what we believe is right.

Why Work with SpeakOut SpeakUp Ltd and Courageous Leadership, LLC?

I have learnt certain truths as a result of having uncovered and brought to justice the largest, corporate fraud case in South Africa's history and from working with whistleblowers, academics, solicitors, social psychologists and parliamentarians. From my accumulated experience and research these truths have become crystal clear.

One is that knowledge about human psychology can be translated into viable interventions to help solve real-world problems. Another is that these interventions are often elegant and attractive especially having the properties of the problem at hand.

Our interventions, based on our collective experience and knowledge aim to change the current behaviour patterns by interrupting cognitive biases, routines or habits and skilling individuals for adaptive, social functioning for the benefit to individuals, organisations and society.

Courageous conversations affect cultural prominence by bolstering the popularity and relevance of elements of culture that are already familiar to most people. This in turn creates common ground ensuring social connection (AE Clark & Kashima, 2007) and a sense of well-being. The tendency to pursue common ground during these conversations plays a key role in reinforcing the organisational culture and climate.

Having Courageous Conversations negates small problems becoming scandals or large problems but this is not an innate skill, rather it is a learnt behaviour. We can all learn the skills and strategies to become more adept at addressing challenging social situations at work using our best thinking, values and social support. We call this developing Courageous Leadership through Social Fitness.

- Courageous Voices create a self-correcting culture of integrity and excellence
- Courageous Voices reduce the risk of:
 - Fraud and Corruption
 - Sexual, Domestic, Mental, Physical abuse
 - Accidents and Injuries
 - Mechanical failures and defects
 - Bullying, Discrimination, Prejudice
 - Business, Political and Social failure

Explore more here <http://www.speakout-speakup.org/#/training>