

# SILENCE IN THE CITY?

## WHISTLEBLOWING IN FINANCIAL SERVICES

A STUDY OF THE EXPERIENCES OF FINANCIAL SERVICES WHISTLEBLOWERS (2007–2012)

## Foreword

This report on whistleblowing in the financial services industry follows on from a detailed review of calls to Public Concern at Work's confidential advice line. We analysed 320 calls from workers in the financial services sector. An in-depth analysis of these calls provides a unique insight into the barriers and challenges people working in the sector face.

The findings reveal many workers are quick to make disclosures to a regulator, though the majority are also silenced after one attempt to raise a concern. There are some key messages for business in the data including an urgent need to build trust in their internal systems, more needs to be done to encourage workers to speak up and crucially business must respond effectively to the wrongdoing. Also revealed is the fact that many workers are dismissed when they first raise a concern, suggesting the starting point must be the development of a culture where there is zero tolerance of the victimisation of whistleblowers.

As we have seen with scandals in other sectors, such as at Mid-Staffordshire NHS Trust, a culture of silence and victimisation of whistleblowers can have devastating consequences. With the financial services industry so crucial to Britain's economy and recovery, we need proper accountability and transparency within the sector. Whistleblowers are a vital safety net in the system, but in this sector they appear to be silenced far more quickly than in any other. There is much work to be done.



**Cathy James**

Chief Executive

Public Concern at Work

Slater & Gordon contributed significant research support and legal expertise to this report. Our employment team specialises in advising whistleblowers and would-be whistleblowers, particularly in financial services. We were keen to improve understanding about the issues they face, in particular how, despite legal protections being in place, many still encounter problems when attempting to raise concerns within their place of work.

The research has revealed a widespread lack of trust in the internal bodies and individuals companies put in place to listen to concerns. Much of this distrust was well-founded: many of those who did have the courage to come forward found they were ignored, victimised or even dismissed.

This reflects our experience in cases acting for whistleblowers in the financial services industry. All too often, the response is to focus on the messenger and not the message. Our clients complain that their concerns are ignored, while they are instead victimised or even dismissed.

It is now almost 5 years since the collapse of Lehmans and the onset of the financial crisis. What is striking is that in this period, we have not seen a decline in the number of whistleblowers who come to us after they have been sacked or suffered reprisals. For whistleblowers in this unfortunate

position, the law is on their side, and their rights can be very strong. But litigation is only ever a last resort.

To avoid future scandals that threaten economic stability, whistleblowers' concerns need to be heard, and those responsible should take action to prevent wrongdoing and malpractice. More must be done to foster a culture where whistleblowers can raise concerns safely, and without fear for their careers.

A handwritten signature in black ink, reading "Samantha Mangwana". The signature is fluid and cursive, with the first name "Samantha" written in a larger, more prominent script than the last name "Mangwana".

**Samantha Mangwana**

Employment Lawyer

Slater & Gordon

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## Executive Summary

This research was carried out by Public Concern at Work (PCaW) with the assistance of Sumita Datta, who was kindly seconded to PCaW for the purposes of the research, from Slater & Gordon Lawyers. For our research we used a sample of 320 cases of workers in the financial services sector who contacted our advice line between 2007 and 2012. Many of these workers had already experienced, or anticipated, problems in raising a concern in the workplace. Therefore our findings are not representative of how serious concerns are raised and dealt with in financial services, but the experience of those when this has become challenging. We provide callers with advice on whether or how to raise their concern. Many callers do not always indicate precisely what course of action they may choose to take, or call us back to let us know what they did or the outcome. As such much of the information below is about the experience of the whistleblower up to the point they contact the PCaW Advice Line. Throughout this report we compare findings to “all sectors” drawn from our report *Whistleblowing: the inside story – a study of the experiences of 1,000 whistleblowers*<sup>1</sup>.

From our research into financial services we know that those who contact us for advice on how to raise a concern are usually professionals who have been working at a bank for less than two years. They raise a concern just once, about an on-going wrongdoing, which has been occurring for less than six months and affects the wider public. This indicates that workers are willing to speak up quickly about risks to wider society, but are easily silenced.

Nearly all workers from our sample were raising a concern that was visible to others, but 84% said they raised their concern alone. This demonstrates too many are acting as lone voices without the leverage and safety of working as a group, indicating a worrying lack of will by others to speak up in the workplace. However a quarter of those that did speak up said they were motivated to do so for personal reasons, such as strengthening their position in relation to an employment dispute.

Our findings reveal that the situation for whistleblowers in the financial services is more challenging than in any other sector. Whistleblowers are more likely to be dismissed at first or second stage, less likely to raise a concern more than once and are not likely to approach higher management at any stage. There is also a much higher likelihood that a whistleblower will approach a regulator, usually the Financial Services Authority (FSA)<sup>2</sup>, the first and second time they raise a concern. This may indicate that a failure by line management to respond to a concern damages confidence that the organisation will handle a concern effectively at any level.

**Overall our findings point to a lack of trust in the system with mixed motives for raising a concern. This is unsurprising when viewed alongside the higher than usual rate of dismissal in this sector and three out of four whistleblowers stating that nothing was done to address the wrongdoing.**

**Francesca West**

Director of Policy

&

**Andrew Parsons**

Policy Officer

Public Concern at Work

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<sup>1</sup> A research project by Public Concern at Work and the University of Greenwich, May 2013

<sup>2</sup> Now the Financial Conduct Authority (FCA)

## Key findings

Throughout this report, findings compared to “all sectors” are drawn from our report *Whistleblowing: the inside story – a study of the experiences of 1,000 whistleblowers*.

### Organisation type

The types of organisation were: banks (with retail arm) (48%), investment banks (9%), Independent Financial Advisers (7%), asset management firms (6%), insurance companies (5%), accountancy firms (5%), brokerages (4%) and finance companies (4%).

We also had low numbers of cases from rating agencies, regulators, mortgage brokers, building societies and debt recovery agencies.

### Type of concern

The top six concerns were: fraudulent or criminal activity (17%), mis-selling (14%), breach of company policy (such as recruitment procedures or code of conduct) (14%), breach of legal or regulatory obligations (13%), incorrect reporting to the employer or stakeholders (6%) and incorrect reporting to a client or third party (5%).

We also had calls about market abuse, insider training, money laundering and tax fraud.

### About the wrongdoing

- Half of all cases involved wrongdoing that harmed the public (49%).
- In 76% of cases the wrongdoing was recurring.
- In nearly half of the cases (47%) the wrongdoing had been occurring for less than six months.
- Nearly all callers stated that there were other witnesses (99%). However overall 84% of workers said they raised a concern alone.

### Job Role

- 22% of callers were management level: including team leader, assistant manager, line manager or senior management positions.
- 16% described themselves as holding an executive, director or partner position.
- 11% were financial advisors or consultants.
- 10% were accountants or auditors.
- 7% were analysts.
- 7% were compliance, fraud or risk specialists.

### Professional standing

- 58% of workers had professional standing (such as accountant or lawyer).

### Employment status

- 69% of callers were seeking advice about a current employer.

### **Length of service**

- 37% of callers had been in the company for less than two years.

### **Motivation**

- 22% of callers raised or intended to raise their concern for personal motives (e.g. to support an employment tribunal claim, to support a grievance or because of a personal dislike of an individual). 6% were motivated by worries over their own liability and 10% by a professional duty to raise the concern.
- 55% of callers were motivated either by a desire to protect the public (34%) or by a desire to protect the company they work for (21%).

### **Barriers to raising concerns**

We were able to glean limited information on the above but noted the following:

- On 26 occasions whistleblowers reported that an adverse effect on their career prevented them from raising a concern for the first time.
- On 19 occasions whistleblowers reported a 'gagging clause' or non-disparagement clause in a compromise agreement prevented them from raising a concern.
- 12 individuals said an existing employment dispute or personal issues prevented them from raising a concern.

### **How many times does a whistleblower raise a concern?**

- 62% of workers raised a concern at least once. This is higher than findings from *Whistleblowing: the inside story*, (44%). However, those in financial services were less likely to raise a concern a second time (20%), which is much lower than our findings on all sectors (39%) from *Whistleblowing: the inside story*.

### **Formal power of wrongdoer**

- Though 38% of callers were either at management or executive level, 86% of wrongdoers were seen as more powerful than the whistleblower.

### **Where a concern was raised**

- Where a concern was raised for the first time the recipient was within the organisation 66% of the time. We included line managers, senior managers, executive/directors; compliance/risk/legal functions and internal reporting line/nominated officer within the definition of within the organisation. Within this figure line managers were the most popular recipient (27%).
- Raising a concern with senior management was the least preferred route at all stages of raising a concern. This is in sharp contrast to our findings in *Whistleblowing: the inside story* this is the most preferred route the second time a concern is raised across all sectors (33%).
- If the concern was raised a second time then the use of internal arrangements nearly halved, making up 35% of the recipients of concerns. This figure is 57% across all sectors.

- Specialist functions such as compliance had slightly higher usage (10%) than whistleblowing hotlines (8%) (designed to provide alternative to line management or to be a place to raise concerns should the issue not be dealt with) the first time an individual raised a concern. Usage of hotlines decreased throughout the process of raising a concern, indicating that if the whistleblower did not receive a positive response from line management they were unlikely to trust these channels either.
- 18% of individuals approached a regulator the first time they raised a concern, increasing to 39% the second time a concern was raised. This figure is 4% and 11% respectively, across all sectors.
- A concern was raised with a regulator 143 times. Of these 73% were raised with the Financial Services Authority (now the Financial Conduct Authority). Disclosures to other regulators were spread across the following: the Financial Reporting Council, HMRC, Information Commissioner's Office, Office of Fair Trading, Serious Fraud Office, and the Securities and Exchange Commission.

### **Response to the concern**

- A sizeable majority of callers said that nothing had been done to address their concern: 77% said this after raising their concern for the first time; this figure falls slightly to 71% after the concern is raised for a second time and is 53% when the concern was raised for a third or fourth time.

### **Treatment of whistleblowers**

- In 60% of cases whistleblowers reported no response from management, either negative or positive.
- From the remaining 40% (112 cases):
  - 42% of whistleblowers were dismissed after raising their concern for the first time. This is markedly different to previous research, where 24% of whistleblowers reported being dismissed on raising a concern for the first time. 48% of workers in financial services reported that they were dismissed on the second attempt to raise a concern, compared to 29% from all sectors.
  - 21% are formally disciplined, rising to 28% the second time a concern is raised.
- Out of 112 cases, there were only 11 instances where organisations were described as supportive, by the whistleblower.



## Conclusions

Organisations have a very limited opportunity to handle a concern well before a whistleblower either falls silent or escalates the matter to regulator. Three possible points can be drawn from this data: 1) that financial services companies are missing a chance to deal with concerns at an early opportunity; 2) where a concern is resolved, this is not fed back to the whistleblower; and 3) there may be missing data from our study due to disclosures to various regulators, who do not then follow up with the whistleblower even where an investigation has led to a resolution of the concern. To change this perception, more work needs to be done to feed back information about the concern to the whistleblower and build trust in specialist functions such as compliance or the whistleblowing hotline, where line management has failed.

Too many whistleblowers experience formal victimisation or dismissal. This will inevitably influence how vocal a workforce may be, with barriers such as fear of an adverse effect on career being well placed. Financial institutions who wish to overcome this and ensure staff know it is safe and acceptable to speak up, will need to enforce the message that there is a zero tolerance of the victimisation of whistleblowers.

While many professionals ask us for advice, few have found support with their professional body. This may indicate a need for promotion or development of support in this area.

A quarter of individuals had a personal motivation for raising a concern. This indicates that incentive structures for raising concerns in the sector could be effective. This need not be in the form of a regulatory reward programme, as exists under the Dodd Frank Act (run by the Securities and Exchange Commission) in the US, but could be part of how ethics is rewarded within the workplace through remuneration and positive appraisal.

## Methodology

Every time an individual approaches us for advice, we take notes on the nature of the concern and the unique situation of the whistleblower. We attach these notes to the cases in our database, so for each whistleblower we advise, our database includes a narrative of their whistleblowing journey.

For this research we identified 420 cases between the period 2007-2012, where the caller worked in the financial services sector. We excluded the following cases: those that had been identified as financial services but on closer inspection revealed the case to be a financial concern within a different sector; where the call for advice came from those other than the whistleblower; where there was no information on the type of wrongdoing or type of organisation the whistleblower was working for; overall there was insufficient data. This reduced our sample to 320 cases.

To conduct the qualitative analysis of the cases we used the code book from our research paper *Whistleblowing: the inside story*, as the template for this project. Alterations were made to capture some of the unique trends and characteristics in the financial services sector, while maintaining a basis for comparisons. Some of the additional categories were identified before developing the code book, while other alterations and additions were made during testing.

Initial testing of the code book took place from 1 November 2012 to 10 November 2012. This was carried out by a PCaW member of staff and a paralegal on secondment from Slater & Gordon, initially coding 50 random cases using the code book, then making alterations where necessary and coming to a shared understanding of what was to be coded from the files. This process was then repeated with 10-15 sample cases with the amended code book and the process was then repeated on the remaining sample cases. This process was repeated until no differences in understanding were revealed. The paralegal then worked systematically through the remaining 320 cases by year, coding each of the narratives with supervision from the PCaW member of staff. This process ran from 10 November 2012 to 4 January 2013. We were strict in recording and categorising data and if information was not explicitly stated in the narrative of case, no subjective interpretation was used.

It is important to point out this research is based on secondary data. The narratives were written by PCaW staff for the purpose of giving advice, not for research purposes. The implication is that for most variables not every case included data. We indicate in the report the size of the subsample (N) that had data for the findings we present.

## Appendix one: detailed findings

### 1. Perceiving wrongdoing

#### a. Type of wrongdoing

The top six concerns in the sample (N=316) were fraudulent or criminal activity, miss-selling, breach of company policy, breach of legal or regulatory obligations, incorrect reporting to employer or stakeholders and incorrect reporting to a client or third party.

Type of Wrongdoing (N = 316)	Number/percentage
Fraudulent or criminal activity	53 (17%)
Breach of company policy	44 (14%)
Mis-selling	43 (14%)
Breach of legal or regulatory obligations	40(13%)
Incorrect reporting to employer or stakeholders	20 (6%)
Incorrect reporting to a client or third party	16 (5%)

Breach of company policy can include concerns that fall short of either regulatory breach or a criminal offence but are still prohibited by the company, such as a failure to follow recruitment procedures.

#### b. Where does the whistleblower work?

The vast majority of callers came from the banking sector (48%).

Organisation (N = 242)	Number/percentage
Bank	115 (48%)
Investment industry	21 (9%)
Independent Financial Advisor	17 (7%)
Asset management firm	14 (6%)
Accountancy firm	11 (5%)
Brokerage	9 (4%)
Finance company	9 (4%)

We also had low numbers of cases from rating agencies, regulators, mortgage brokers, building societies and debt recovery agencies.

#### c. Ethical distance

We coded how close the whistleblower was to the wrongdoing. The coding not only recorded whether or not a whistleblower was involved in the wrongdoing, but also whether the wrongdoing was part of their job responsibilities. Some job roles are ethically closer to the wrongdoing than others. So for example a compliance officer who is concerned about potentially misleading information being passed to a regulator is closer to the wrongdoing than a member of the sales team with a similar concern, so the two situations are coded differently. This coding was done by comparing the roles of both the whistleblower and the wrongdoer and determining how ethically distant the whistleblower is from the wrongdoing.

<b>Ethical Distance (N = 320)</b>	<b>Number/Percentage</b>
Did not contribute to wrongdoing, falls outside job responsibility	104 (32%)
Did not contribute to wrongdoing, falls under job responsibility	117 (37%)
Contributed to wrongdoing (within job role)	24 (8%)
Contributed to wrongdoing (outside job role)	1 (0.3%)
Unknown	74 (23%)

#### ***How we understand the findings:***

This demonstrates the vast majority of financial services whistleblowers seeking advice are not involved in the wrongdoing, with only 8% of callers saying they contributed to the wrongdoing. The majority of these were people who have contributed to wrongdoing within their job role (8%). This figure was the same in our report *Whistleblowing: the inside story*.

From the data we can see that whether a whistleblower views the wrongdoing as part of their job or someone else's responsibility, it has little effect on whether staff come forward with a concern.

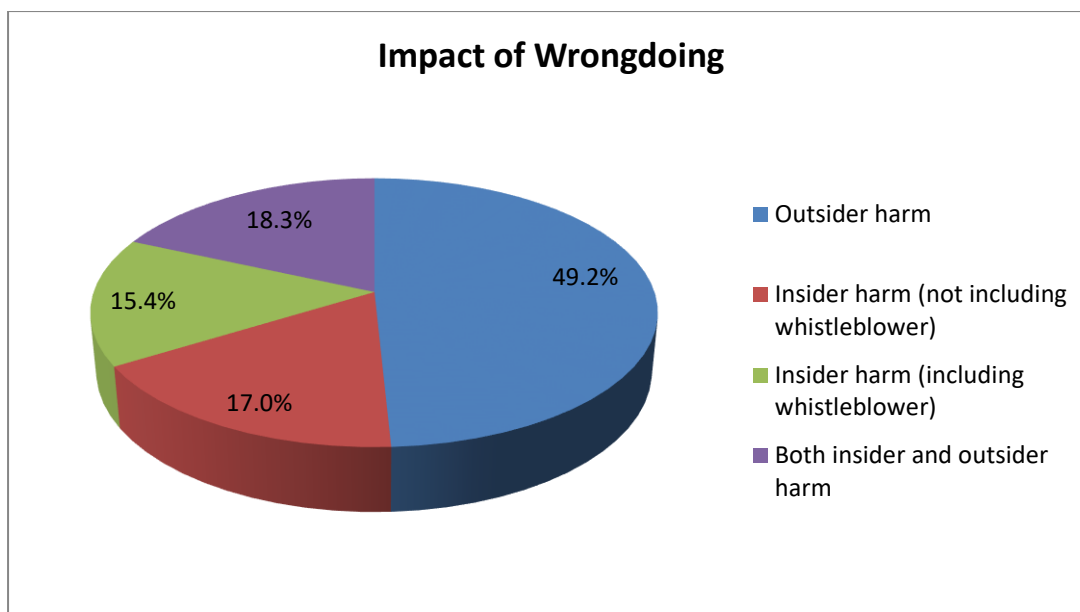
#### **d. Who is harmed by the wrongdoing?**

Whistleblowing usually involves raising a concern as a witness rather than a situation where the wrongdoing or malpractice affects the whistleblower personally. In other words wrongdoing that affects others as opposed to the rights of the whistleblower. Where the whistleblower is personally affected by the concern they are trying to address it may be more appropriate to use the grievance procedure.

In analysing the impact of the wrongdoing we distinguished between cases where the wrongdoing caused;

- **Outsider harm:** e.g. fraudulent behaviour and breaches in regulation.
- **Insider harm not including the whistleblower:** e.g. where a colleague is reporting false information to the employer for bonus or performance purposes.
- **Insider harm including the whistleblower:** e.g. where workers are required to act in contravention of their own code of conduct.
- **Both insider and outsider harm:** e.g. where staff feel pressured into mis-selling financial products.

<b>Who is harmed by wrongdoing</b>	<b>Number/Percentage</b>
Outsider harm	(153) 49%
Insider harm (not including whistleblower)	(53) 17%
Insider harm (including whistleblower)	(48) 15%
Both insider and outsider harm	(57) 18%



#### e. How often does the wrongdoing take place?

Cases were coded either as one-off incidents of wrongdoing, or wrongdoing that was a recurring, for example, an isolated case of mis-selling or where staff are continuously pressured to mis-sell.

Frequency	Number/Percentage
One-off	70 (24%)
Recurring	224 (76%)

#### *How we understand the findings:*

The majority of cases involved situations where there were multiple instances of wrongdoing (76.2%), but the 23.8% of cases where the wrongdoing was judged as a one-off event is higher than the average across all sectors (14%).<sup>3</sup>

#### f. Duration of the wrongdoing

We could only identify 85 cases from the sample where the duration of the wrongdoing:

Length of Time (N = 85)	Number
Less than six months	40
Less than two years	27
Less than five years	14
More than five years	4

In the majority of cases the wrongdoing had been occurring for less than six months

#### g. How powerful is the wrongdoer?

We wanted to not only look at the role and professional standing of the whistleblower, but also to analyse the formal power of the wrongdoer. We coded this by comparing the seniority of the wrongdoer to the whistleblower as a measurement of the difference in power between them.

<sup>3</sup> *Whistleblowing: the inside story*

Professional Standing	Percentage/Number
	58%
Management	24%
Executive or Director	14%
Admin or Clerical	4%
Formal Power of Wrongdoer	Number/Percentage
Wrongdoer less powerful	5 (1.9%)
Wrongdoer of equal power	32 (11.9%)
Wrongdoer more powerful	231 (86.2%)

### ***How we understand the findings:***

Most of the callers seeking advice are concerned about the actions and behaviour of colleagues who are considered to be more senior than they are within the organisation. This is unsurprising in some ways for two reasons. First a colleague who is less senior than a whistleblower will have more scope to deal with the problem themselves or to pass on the information to someone of equal seniority. Secondly there is more scope to informally deal with an issue if a colleague is of equal power to an individual. In both situations an individual may not view the situation as whistleblowing, feeling less vulnerable in terms of victimisation and so will not necessarily need advice on the situation.

A large number indicated they were concerned about the wrongdoing of a more senior colleague (86.2%), compared to a wrongdoer of equal seniority (11.9%). This is a high percentage given 21% of callers hold a management position and 16% are either executives or directors (see 2.a below), indicating the wrongdoer was at the highest level (i.e. board level) or the individual is concerned about the overall conduct of the organisation and perceives this to be sanctioned at the highest level.

## **2. The whistleblower**

### **a. Position**

We coded the job role of the whistleblowers who contacted us looking for advice. The table below shows the top six roles from the data.

Job Role	Percentage/Number
Executive, Director or Partner	16%
Manager or Senior Manager	21%
Financial Advisor or Consultant	11%
Accountant or Auditor	10%
Analyst	7%
Compliance, Risk or Fraud Specialist	7%

From the above information it seems those more senior in the organisation seek advice when they have a concern. This may indicate that more junior individuals feel less able to challenge wrongdoing or seek advice. This may be due to a low awareness of support in the sector.

We coded the professional standing of the caller as many professional bodies expect their members to comply to certain legal and ethical standards. Failure to do so may lead to possible disciplinary action or expulsion from the profession. Part of these standards may well require a member to raise a concern where they become aware of wrongdoing or to escalate the concern to a regulator if the issues raised are not addressed. Overall, 26% of those who contact our advice line are professionals, demonstrating a higher number of professionals in financial services seek advice.

It should also be noted that management and directors coded in this section could also hold professional qualifications, but information on this may not have been present within the narrative of the case.

### ***How we understand the findings:***

The data shows that 37% of our callers are in some form of management role within the organisation.

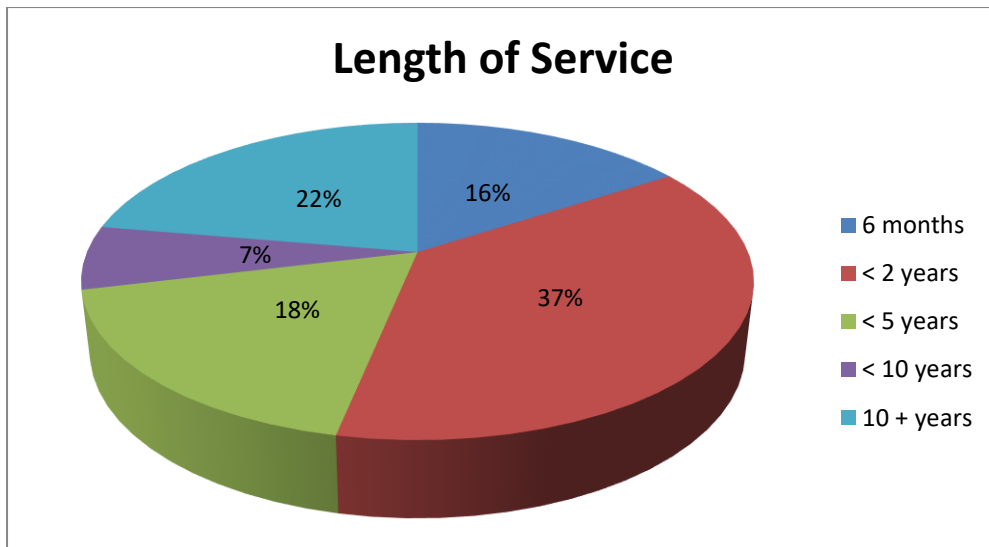
It is interesting to note that the remaining four job roles within the top six are technical or analytical roles (e.g. financial advisor, accountant or analysts). It could be that these roles, similar to management positions, hold a unique role within the company in spotting potential wrongdoing or malpractice.

There is a high number of callers to the advice line from financial services who hold professional qualifications. These individuals are subject to professional duties that would require them to report suspected wrongdoing such as fraud, false accounting or money laundering. Not only could this drive the need for seeking advice to ensure they are complying with their duties, but those with a professional standing may have had specific training on how to identify and report suspected wrongdoing

## **b. Length of service**

We coded the length of time whistleblowers have been working.

<b>Length of Service (N = 139)</b>	<b>Number</b>	<b>Percentage</b>
Less than two years	74	53%
Between two and five years	25	18%
Between five and 10 years	9	7%
More than 10 years	31	22%



- The largest number of callers came from those with six months' to two years' service (37%).
- The second largest number of calls came from those workers with 10 years or more service (22%).

#### ***How we understand the findings:***

Over half of callers could be considered new employees as they have less than 24 months' experience in the company (53%). This is a larger percentage when compared with the average caller that contacts PCaW: in our report *Whistleblowing: the inside story* 39% of callers had less than 24 months service.<sup>4</sup> Additionally we receive less calls from those who have between two and 10 years' service (25%) in financial services than in our overall research findings (45%). This builds the overall picture that very senior and newer employees are the most likely to raise a concern within the financial services sector.

Newer employees may be more willing to come forward with a concern and less likely to accept poor practice or wrongdoing. Staff with longer service may feel a mixture of complex work relationships, wilful blindness or a sensitive working culture can prevent them from speaking up. Though it appears these barriers may be overcome where the whistleblower holds a very senior role.

The message for the financial sector is arrangements should form part of induction training and that arrangements are regularly publicised to staff. Furthermore that these arrangements need to consider how very senior staff are supported and protected.

### **3. Raising a concern**

#### **a. How many times do whistleblowers raise a concern?**

We coded the first four times a whistleblower raised a concern either internally or externally. Some workers called us before they raised a concern a first, second, third or fourth time and expressed only an intention to raise a concern. In 217 cases, a concern had actually been raised at least once 43 at least twice, 27 three times and in only 11 cases was a concern raised for a fourth time. There are cases where a whistleblower raised a concern more than four times but were few in number.

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<sup>4</sup> Greenwich reference



Raised once	Raised twice	Raised three times	Raised four times
136 (62%)	43 (20%)	27 (12%)	11 (5%)

**N = 217**

### ***How we understand the findings:***

Most whistleblowers (60%) raise their concern once; only 20% will raise a concern twice. These figures differ to the average figure across all sectors in *Whistleblowing: the inside story* where 44% of whistleblowers raised a concern once and 39% raised their concern a second time. The results also suggest that financial sector workers do raise concerns but are less likely to raise a concern for a second time. This indicates that financial organisations have a very limited opportunity to capture information from staff if they have a concern about wrongdoing.

It is important to note that while there is a large decrease from those who raise a concern twice to those who raise a concern three or four times, the whistleblower may continue to raise a concern in one of the ways we have advised. It is unusual that they will call us back to let us know what they decided to do or how the matter may have been resolved.

The media perception of the financial sector is one where no-one speaks out. However, from the analysis of our cases it would seem that this picture is perhaps overstated. Whistleblowers from this sector do raise a concern but they are less likely than other sectors to raise the concern for a second time.

## **b. Motivation**

We coded the motivation of the caller when they either raised a concern or where they were considering raising a concern. We coded motivation by either looking at what a whistleblower was looking for in terms of advice, or what their motivation was for raising a concern.

Motivation	Number	Percentage
Personal liability (e.g. involved in the wrongdoing or believe they will face disciplinary action or prosecution if they do not raise the concern)	20	6%
Professional duty	32	10%
Personal motives (e.g. employment tribunal, seeking a severance package, avoiding redundancy, dislike of the wrongdoer or company)	71	22%
Protect the public	109	34%
Protect the company/employees	68	21%
Other	2	1%
Unknown	18	6%

Most individuals are motivated by the public interest to protect the company or the public (55%). However this also highlights mixed motives, with nearly one in four individuals raising a concern for personal advancement.

### ***How we understand the findings:***

Around one in four callers from the financial sector raised a concern for personal reasons. This adds weight to the argument that the Public Interest Disclosure Act is occasionally misused in this sector as a quarter of individuals were attempting or were using a potential whistleblowing claim as a way of either bolstering an employment tribunal claim, or as leverage in negotiations over their employment position.

Another conclusion could be that these figures represent a group of workers in the financial sector that are motivated to raise a concern by personal benefit or reward that can be achieved from the situation. As we have seen above, these workers have information about serious wrongdoing such as fraudulent activity or mis-selling, that it is in the public interest to report. To encourage these workers to come forward with a concern, incentives from the employer or even the regulator may be effective. However overall a system of rewarding individuals for raising a concern, be that by positive appraisal, mere thanks or remuneration, could be considered by employers.

Professional duty as a motivation was present in 10% of cases demonstrating that this is a useful incentive for encouraging individuals to raise a concern. An individual maybe seeking advice on whether the way they have raised a concern fulfils their professional duties, or whether they need to do more i.e. escalating the concern further up the hierarchy or to an external body such as a regulator.

### **c. Barriers**

As part of this research we coded any reasons which the caller stated was preventing them from raising a concern e.g. where a whistleblower is concerned about the effect this might have on their career. We excluded cases where difficulties were mentioned but the whistleblower still raised the concern as this could not be considered a barrier.

Barriers identified were:

**Adverse effect on career:** including where a whistleblower believes coming forward will damage their career or reputation. This included situations where a whistleblower was concerned about a current or former employer.

**Personal liability:** where a whistleblower believes they may face legal action from their employer if they come forward because they have had some degree of involvement in the wrongdoing.

**Unclear or inadequate whistleblowing arrangements:** where the whistleblower is unaware of whistleblowing arrangements within the organisation, or where these arrangements cause uncertainty or confusion for a whistleblower.

**Compromise agreements with gagging clauses:** where a legal agreement to end an employment relationship also included a clause that stops a whistleblower from raising a concern. It should be noted that part of the legal protection for whistleblowers prohibits such agreements so some of these cases may well be where the whistleblower is under the erroneous impression such a clause

can prevent them raising a concern that would be protected under PIDA, e.g. an agreement that holds a non-disparagement clause.<sup>5</sup>

**Unaware of relevant external body or regulator:** If an individual is unsure where to go, this can prevent them raising a concern.

**Lack of feedback about outcome:** a whistleblower may be put off escalating a concern if they received no feedback in the past, or where they know of previous whistleblowers not receiving feedback. Both situations can have a demoralising effect.

**No trust or confidence in employer:** this included a situation where an individual other than the whistleblower had been victimised for coming forward with information about wrongdoing or malpractice.

**Employment dispute or personal issues:** this included a situation where the whistleblower believes escalating a concern will look like ‘sour grapes’ either after a breakdown in the employment relationship, or after a dispute with a manager or colleague.

**Confidentiality Issues (owed to third parties):** this included where confidentiality was owed to a client or partner organisations that would be breached if the wrongdoing was raised.

Many callers did not explicitly mention a barrier and it is likely that where these barriers are overwhelming individuals will not even contact us for advice. We recorded the frequency of each barrier from within the data set. An individual may have listed more than one barrier.

Barrier	Frequency
Adverse effect on career	26
Personal liability	10
Unclear or Inadequate whistleblowing arrangements	5
Compromise agreement with gagging clause	19
Unaware of the relevant external body or regulator	6
Lack of feedback about outcome	5
No trust and confidence in employer	5
Employment dispute or personal issues	12
Confidentiality Issues (owed to third parties)	10

- On 26 occasions adverse effect on career was cited as a reason not to raise a concern
- On 19 occasions compromise agreements with gagging clause was cited as a barrier to raising a concern

### ***How we understand the findings:***

Though the numbers are low the impression from the figures is that where a whistleblower has a concern, fear of an adverse effect on their career is the primary barrier. Gagging clauses were also frequently cited as a barrier, though this point only arose where there had been a breakdown of the employment relationship and a compromise agreement was in place.

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<sup>5</sup> s. 43J the Public Interest Disclosure Act states “Any provision in an agreement to which this section applies is void in so far as it purports to preclude the worker from making a protected disclosure.”

Organisations need to be aware that when they design and promote whistleblowing arrangements the messages need to reassure staff that coming forward with information about wrongdoing or malpractice will not damage their career and that victimisation will not be tolerated.

For regulators and policy makers more work needs to be done to ensure whistleblowers are aware of their employment rights within negotiations that lead to a compromise agreement

#### **d. Do whistleblowers raise a concern alone?**

We coded how often workers from the financial sector raised their concern as part of a group and how often they raised their concerns on their own. The third distinction was where a whistleblower had raised the concern on their own, but they were also aware of past attempts to raise it.

<b>Was the Whistleblower alone? (N = 212)</b>	<b>Numbers</b>	<b>Percentage</b>
Alone	179	84%
In a group	21	10%
Alone, but others have raised concerns in past	12	6%

#### **Other witnesses**

We separately coded whether the incident of wrongdoing or malpractice was witnessed by others. Whether a whistleblower raises a concern on their own or in a group may reveal a culture where although others are aware of wrongdoing, they are not willing to come forward.

The low sample size reflects that information on this variable was absent from many cases.

<b>Witnesses (N = 79)</b>	<b>Number</b>
Yes	78
No	1

#### ***How we understand these findings:***

84% of whistleblowers in the sample raised a concern on their own. However where we have the information, workers across the sample indicated there were nearly always other witnesses. This indicates too many are acting as lone voices in the workplace without the leverage and safety of working as a group.

#### **e. Where do they go?**

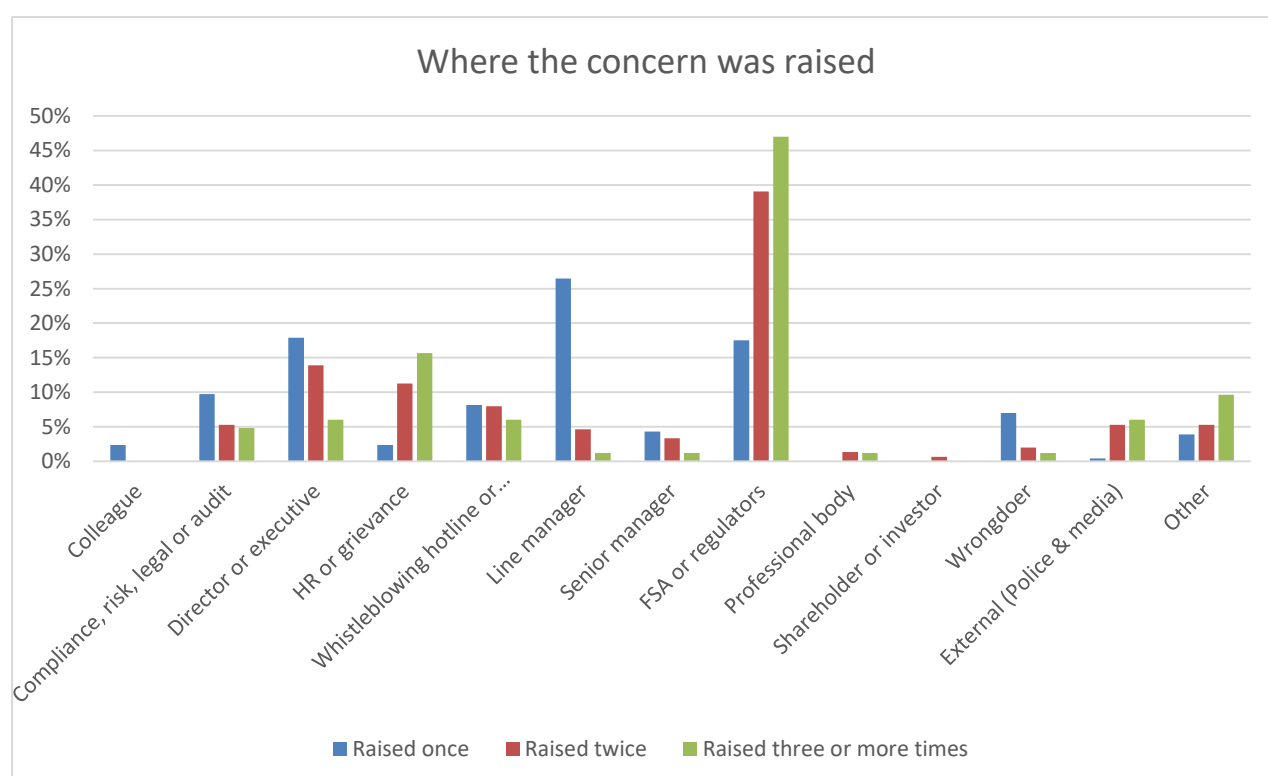
We wanted to not only see where whistleblowers took their concern to, but also where the recipient was in relation to how many times they had already attempted to raise their concerns. We coded both where the whistleblower had actually raised a concern and where they expressed an intention to raise a concern with a specific recipient.

Compliance, risk, audit and legal functions have been coded differently to whistleblowing hotlines and designated officers in whistleblowing arrangements. All of these play a role in providing an alternative for whistleblowers where raising concerns with local management is not appropriate (i.e. where the line manager is involved in the wrongdoing), or where the concern has not been addressed. In some cases parts of these arrangements, such as a whistleblowing hotline, may be outsourced to third parties. These were still considered internal measures as they report back into the company, usually to a specialist function such as compliance.

Within the coding we recorded separately each regulator that was contacted by a whistleblower but as the vast majority of these disclosures were made to the Financial Services Authority (FSA) (now the Financial Conduct Authority). A breakdown of the different regulators is in more detail below.<sup>6</sup>

We coded where a whistleblower raised *or intended to raise* a concern for the first four attempts:

Recipient of concern	Raised once N = 257	Raised twice N = 151	Raised three times N = 54	Raised four times N = 29
Colleague	6 (2%)	0 (0%)	0 (0%)	0 (0%)
Compliance, risk, legal or audit	25 (10%)	8 (5%)	4 (7%)	0 (0%)
Director or executive	46 (18%)	21 (14%)	3 (6%)	2 (7%)
HR and grievance	6 (2%)	17 (11%)	10 (19%)	3 (10%)
Whistleblowing hotline or designated officer	21 (8%)	12 (8%)	4 (7%)	1 (3%)
Line manager	68 (27%)	7 (5%)	1 (2%)	0 (0%)
Senior manager	11 (4%)	5 (3%)	0 (0%)	1 (3%)
FSA and other regulators*	45 (18%)	59 (39%)	27 (50%)	12 (41%)
Professional body	0 (0%)	2 (1%)	0 (0%)	1 (3%)
Shareholder or investor	0 (0%)	1 (1%)	0 (0%)	0 (0%)
Wrongdoer	18 (7%)	3 (2%)	1 (2%)	0 (0%)
External (Police & media)	1 (0.4%)	8 (5%)	1 (2%)	4 (14%)
Other	10 (4%)	8 (5%)	3 (6%)	5 (17%)



<sup>6</sup> Note large number of calls to our advice line can also be explained by the facts that as a charity PCaW has worked closely with the regulator over a number of years.

Our analysis shows when a concern was raised for the first time the worker's organisation was the recipient 66% of the time. We included line managers, senior managers, executive or directors; compliance, risk, legal or audit functions and whistleblowing hotline or designated officer within the definition of internal to the organisation. Within this figure line managers were the most popular recipient (27%).

If a concern was raised for a second time, use of internal measures almost halved (35%). Internal functions that are designed to provide an alternative to local management, (compliance, risk, legal or audit functions) make up 10%, when a concern was raised for the first time and then 5% when a concern was raised for a second time. Hotlines or designated officers received 8% of concerns when first raised and 8% if the concern was raised for a second time.

Very few workers raised their concern with higher management at any stage. It was more likely that the most senior in the organisation (director or executive) were approached at first stage (18%) and were the most popular recipient internally the second time a concern was raised (14%).

Regulatory disclosures increased from 18% when a concern was raised for the first time to 39% if the concern was raised for a second time.

A concern was raised with a regulator 143 times. Of these 73% were raised with the FSA. Disclosures to other regulators were spread across the following: the Financial Reporting Council, HMRC, Information Commissioner's Office, Office of Fair Trading, Serious Fraud Office, and the Securities and Exchange Commission.

Despite the fact that 58% of whistleblowers said they were a member of a profession, very low numbers (almost nil) reported raising a matter with their professional body.

### ***How we understand the findings:***

Results from our financial services sample suggest that after raising a concern for the first time there is little confidence in internal arrangements. Line managers were the most popular recipients when raising a concern for the first time. This is not surprising as the whistleblower may feel more confident approaching someone they know within the management structure.

However it is surprising such a low percentage of whistleblowers approached specialist internal functions (compliance, risk, legal or audit and whistleblowing hotline or designated officer) when the concern was raised for a second time, marginally preferring instead to go straight to the top of the organisation at director or executive level. We would expect to see more individuals raise a concern with these functions after first raising a concern if the wrongdoing or malpractice has not been dealt with, as it is an alternative way of raising a concern internally.

Whistleblowers who do not have their concerns addressed by the management structure seem more willing to approach the regulator. The reason for this could be a lack of awareness about the whistleblowing arrangements through a lack of promotion to staff or trust and confidence once the concern has not been addressed internally or perhaps in the past because other concerns have not been handled effectively. Either way it would seem organisations have limited opportunities to listen to staff before they reach the regulator.

Finally, it appears that professionals are not seeking guidance or support from their professional bodies, this may be because they are unaware of ethics or support lines that exist within some professional bodies, or they may belong to a body that does not provide such support.

## 4. Responses

### a. To the whistleblower

Whether a whistleblower is victimised for raising a concern is an important part of understanding the culture that exists within any sector. Within the coding we have recorded not just if victimisation occurred but also what form of victimisation was experienced. We have also coded situations where an organisation was supportive of a whistleblower or where there has been no reaction at all.

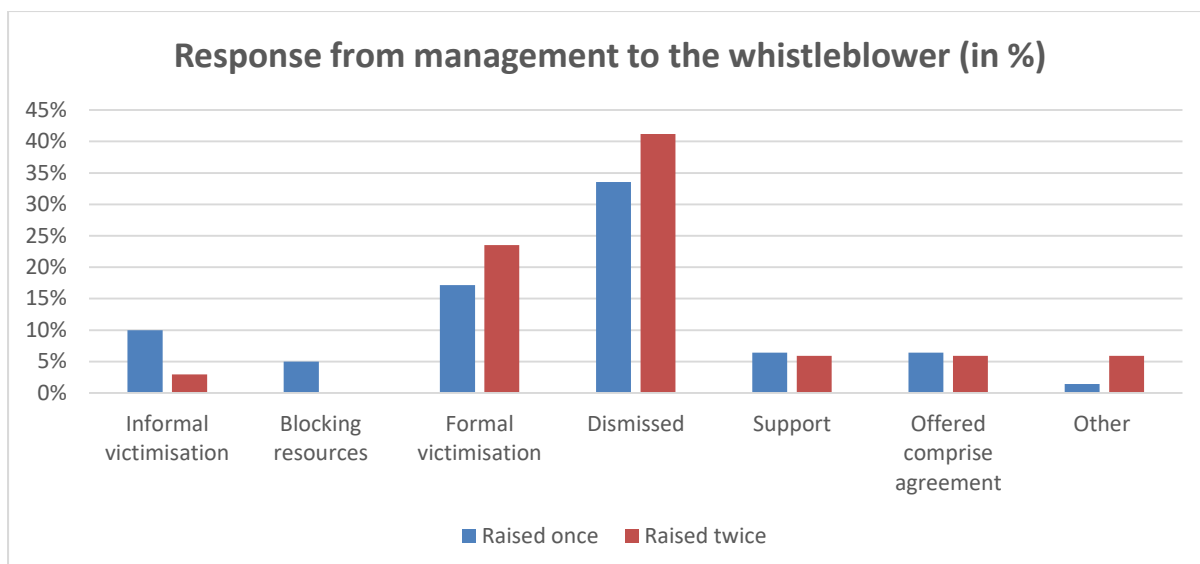
A response from management was explicitly stated in 112 cases (40%). It should also be noted whistleblowers are often motivated to contact us for advice if a negative response is received from the organisation, however this also means in 60% of cases the whistleblower did not consider the response of management as significant enough to comment on.

Different forms of victimisation were coded as follows:

- **Informal victimisation:** action that did not require formal management action e.g. harassment from a manager, closer day-to-day monitoring.
- **Blocking resources:** where a whistleblower's career progression or development was blocked e.g. the refusal of training or the denial of promotion.
- **Formal victimisation:** where disciplinary action fell short of full dismissal e.g. where a whistleblower is demoted or given a formal warning.
- **Dismissed.**
- **Support:** where individuals feel actively supported by management.
- **Compromise agreement:** individuals are offered a severance deal after raising a concern.
- **Other:** included threats of violence and threats of litigation.

Responses were recorded each time the concern was raised over four events; the most significant data came from where the concern was raised once. As stated above, smaller numbers of individuals in this sector raise a concern more than once.

Response (N = 112)	Raised once	Raised twice	Raised three or more times
Informal victimisation	13% (14)	3% (1)	2
Blocking resources	6% (7)	0% (0)	1
Formal victimisation	21% (24)	28% (8)	2
Dismissed	42% (47)	48% (14)	6
Support	8% (9)	7% (2)	0
Compromise agreement	8% (9)	7% (2)	3
Other	2% (2)	7% (2)	1



From our sample of 112 cases, 67% of whistleblowers were victimised after raising a concern for the first time<sup>7</sup>: 42% of whistleblowers were dismissed after raising their concern for the first time; a further 21% were formally disciplined. This is markedly different to previous research, where 24% of whistleblowers report being dismissed after raising a concern once.

This statistic is derived from subjective information provided, it does not comment on the strength of a potential claim under the Public Interest Disclosure Act 1998.

Out of 189 cases, only 11 responses from the organisation were described as supportive by the whistleblower.

#### How we understand the findings-

Many financial services whistleblowers report negative outcomes. What is not clear from the data is whether this victimisation occurs at a local level of management or whether this victimisation is sanctioned from the organisation itself.

Dismissal is more common at first and second stage in this sector than in any other. Many other workers will be aware of the outcomes for those that raise concerns. As seen above, there are usually other witnesses to the wrongdoing, but viewed alongside these findings, it is unsurprising that they are not willing to take the risk in coming forward. This of course leaves the longer term risk that there may be many areas where no one will be willing to come forward and a dangerous culture of silence will prevail.

### b. To the wrongdoing

We coded the response to the wrongdoing at each attempt to raise a concern. The coding for the categories were:

- **Nothing is done:** where the whistleblower expresses that no action has been taken, for example where the whistleblower has been ignored or the wrongdoing is denied.
- **Investigation (low expectation):** where the recipient of the information is conducting an investigation but the whistleblower lacks confidence in the investigation, for example where

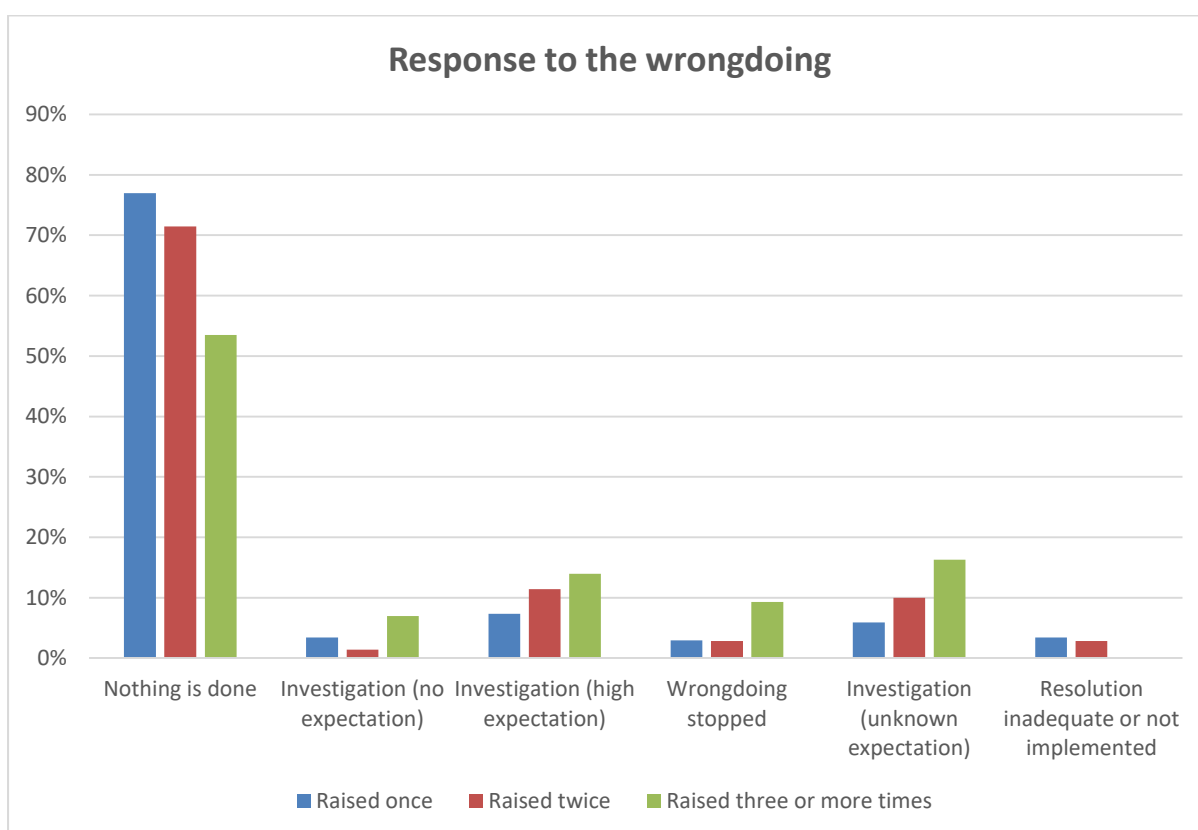
<sup>7</sup> This is a combination of informal, blocking resources, formal, dismissed and other.



the investigation is being headed by someone the whistleblower does not trust or fears that there will be a whitewash.

- **Investigation (high expectation):** as above but where the whistleblower has confidence in the investigation.
- **Stopped:** where the wrongdoing is stopped.
- **Investigation, unknown expectation:** where we did not know what expectation the whistleblower had in relation to the investigation.
- **Resolution inadequate or not implemented:** Where the resolution to not rectify the wrongdoing or was not implemented.

Response to Concerns (N = 317)	Raised once	Raised a second time	Raised a third or fourth time
Nothing is done	77% (157)	71% (50)	53% (23)
Investigation (low expectation)	3% (7)	1% (1)	7% (3)
Investigation (high expectation)	7% (15)	11% (8)	14% (6)
Wrongdoing stopped	3% (6)	3% (2)	9% (4)
Investigation, unknown expectation	6% (12)	10% (7)	16% (7)
Resolution inadequate or not implemented	3% (7)	3% (2)	0% (0)



#### ***How we understand the findings:***

77% of whistleblowers said that nothing had been done to address the wrongdoing after raising their concern for the first time, this figure falls slightly to 71% when the concern is raised for a second time and falls to 53% if the concerns are raised for a third or fourth time.

Two possible points can be drawn from this data:

- 1) Financial services organisations are potentially missing an opportunity to deal with concerns at an early stage.
- 2) A lack of feedback to the whistleblower where concerns are dealt with may explain the high percentage of cases where the whistleblower perceives their concern has not been addressed.

Both points show that more feedback and engagement with staff about the whistleblowing arrangements may well make a difference in the sector.

Additionally the data shows that those that do go onto raise a concern a second or third time have better outcomes for the concern, with an increase in investigation, whether or not they have a high expectation the investigation will be effective.

### c. Change to the whistleblower's position

Where a whistleblower commented on a change to their position we coded the change accordingly-

- **No change:** where the whistleblower directly indicated that nothing had happened to worsen or improve their personal position, for example where the whistleblower is simply ignored.
- **Worsened:** where the whistleblower directly indicated that their personal position changed for the worse after they raised concerns, for example where the whistleblower suffers reprisal.
- **Improved:** where the whistleblower directly indicated that something happened to improve their personal position, for example where the whistleblower is rewarded
- **Silent:** where the whistleblower felt unable to speak up again.
- **Resigned:** where the whistleblower decides to resign.
- **Compromise agreement:** the whistleblower is considering or has accepted a compromise agreement.

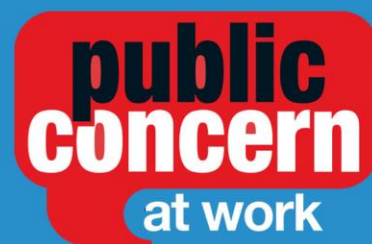
Change after each attempt (N = 225)	Raised once	Raised twice	Raised a third or fourth time
No change	39% (87)	45% (34)	55% (24)
Worsened	41% (93)	28% (21)	18% (8)
Improved	0% (1)	1% (1)	0% (0)
Silent	2% (4)	5% (4)	5% (2)
Resigned	13% (29)	16% (12)	19% (8)
Compromise agreement	5% (10)	6% (4)	5% (2)



#### ***How we understand the findings:***

The number of whistleblowers who reported their position as worsened, is in line with management responses above. However 40% of whistleblowers reported their position as unchanged throughout the process, this significantly different to research report *Whistleblowing: the inside story* where 69% of whistleblowers stated their position had worsened after raising a concern once and only 13% described their position as unchanged. This may indicate that in the 60% of cases where whistleblowers were not subject to a negative response from management, they do not feel otherwise affected by raising a concern. In other sectors individuals may report ostracism by colleagues, a general deterioration of working relationships or a loss of faith in the overall organisation that affects their performance and work satisfaction.

Additionally, resignation is increasingly likely after each attempt to raise a concern, which is in line with our overall findings.



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