

Changing attitudes to speak-up culture

Freshfields whistleblowing survey 2023



Introduction

Whistleblowing, and the promotion of a strong speak-up culture, continues to be a hot topic. With the implementation of new whistleblowing laws in many jurisdictions around the world, ongoing regulatory attention on the importance of whistleblowing, and continued scrutiny of related topics such as non-disclosure agreements, whistleblowing remains in the spotlight. For companies, awareness of reporting routes, training for those who deal with reports, and clear messaging around anti-retaliation are critical aspects of promoting their speak-up culture. Getting things wrong could have consequences both internally and externally.

At a societal level, the long-lasting impact of the #MeToo movement, and the broader stakeholder focus on corporate culture and employee behaviour have impacted attitudes towards whistleblowing and expectations as to how whistleblowing will be handled. Companies must grapple with those expectations against the backdrop of significant changes in the workplace, with remote and hybrid working arrangements becoming the norm for many global employers.

Speak-up culture is underpinned by robust internal procedures and active promotion by senior management. Having a strong speak-up culture can result in real benefits for an organisation. If an employee is confident that whistleblowing is taken seriously by their organisation and that whistleblowers are treated properly, they are more likely to use an internal reporting process than an external one. A strong speak-up culture can therefore allow the organisation to identify issues early, investigate internally and resolve issues, all while retaining control of the process – an opportunity which may be lost if an employee turns to an external reporting route instead.

In a continuation of the exercise we began in 2014, we have gathered the views of over 2,500 managers – across various levels of seniority and responsibility in large companies and 13 industries in the United Kingdom, the United States, Hong Kong, Germany and France – to gauge their attitudes towards whistleblowing and how they may have changed since our last survey in 2020.

The data for 2023 shows an increase in the involvement of managers across the globe in whistleblowing. It also shows a decrease in respondents who would go to their direct boss, or encourage others to speak to their direct boss, to report a concern. Varying levels of awareness of and training on whistleblowing procedures across jurisdictions and sectors demonstrates the continuing need for businesses to engage with their employees and ensure that their speak-up policies are effectively messaged.

Notably for companies with a European footprint, the 2023 data reveals that the EU Whistleblowing Directive has had a limited impact so far, despite it being the first regional whistleblowing framework, which was branded as a potential global standard and was expected to change the European landscape as far as whistleblowing was concerned. The impact of the Directive may be yet to come, given that most member states missed the original December 2021 implementation date.

01 An increased involvement in whistleblowing overall

Over four in 10 respondents (43 per cent) reported being involved in whistleblowing in some form - whether through experiencing a colleague whistleblowing, blowing the whistle themselves, having someone report a whistleblowing concern to them, or being the person against whom a whistleblowing report was made.

This represents a significant increase from 2020, when less than a third of respondents (32 per cent) reported being involved in whistleblowing. The overall level of involvement has now been restored almost to 2017 levels (when it was at 47 per cent). The survey also shows a 5 per cent increase since 2020 in respondents who themselves have been a whistleblower (17 per cent).

The increase in whistleblowing involvement varies across jurisdictions. The United States saw the biggest increase, with six in 10 (60 per cent) reporting in 2023 that they had been involved in whistleblowing, up from two in 10 (18 per cent) in 2020.

The implementation of the EU Whistleblowing Directive has, however, not yet delivered the expected increase in whistleblowing across member states. While Germany saw an increase of 8 per cent of respondents reporting that they had been involved in whistleblowing (39 per cent of respondents up from 31 per cent in 2020), France actually saw a decrease (27 per cent of respondents down from 35 per cent in 2020).

Age also appears to affect the likelihood of whistleblowing involvement. Younger respondents were more likely to be involved in whistleblowing, with almost five in 10 (48 per cent) respondents aged 16-24 reporting involvement in some way, compared with only two in 10 (21 per cent) aged 55+. Mid-career respondents were the most likely to have blown the whistle themselves when compared with other age ranges, with two in 10 (20 per cent) aged 35-44 blowing the whistle. This continues the trend seen in 2020, where younger respondents were much more likely to be involved in whistleblowing than their older colleagues.

43%

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5%
increase on 2020

The survey also shows a 5 per cent increase since 2020 in respondents who themselves have been a whistleblower (17 per cent)

02 Less internal reporting

Although the survey reported an increase in whistleblowing involvement, there was no corresponding increase in the level of reporting within an organisation.

In fact, the survey suggests that employees are less keen to blow the whistle internally than they were three years ago. Only four in 10 (40 per cent) would now blow the whistle to their line manager if they identified wrongdoing (compared with almost five in 10 (46 per cent) in 2020). While, at face value, this might suggest an increased lack of trust in internal reporting or that fear of retaliation has increased, our survey reported only a small increase (1 per cent) in retaliation fears. So, why the significant drop in the number of respondents who would choose to report concerns to their manager?

Our survey data suggests that this may stem from three separate trends:

- First, the fact that many corporate bodies now use third party providers, meaning that employees are less likely to blow the whistle directly to their line managers due to the design of their organisations' whistleblowing procedures: our survey showed a 1.5 per cent increase in reporting to third parties since 2020.
- Secondly, respondents have continued to favour reporting incidents of wrongdoing to regulators or authorities. Two in 10 (23 per cent) reported that they would go straight to authorities to report

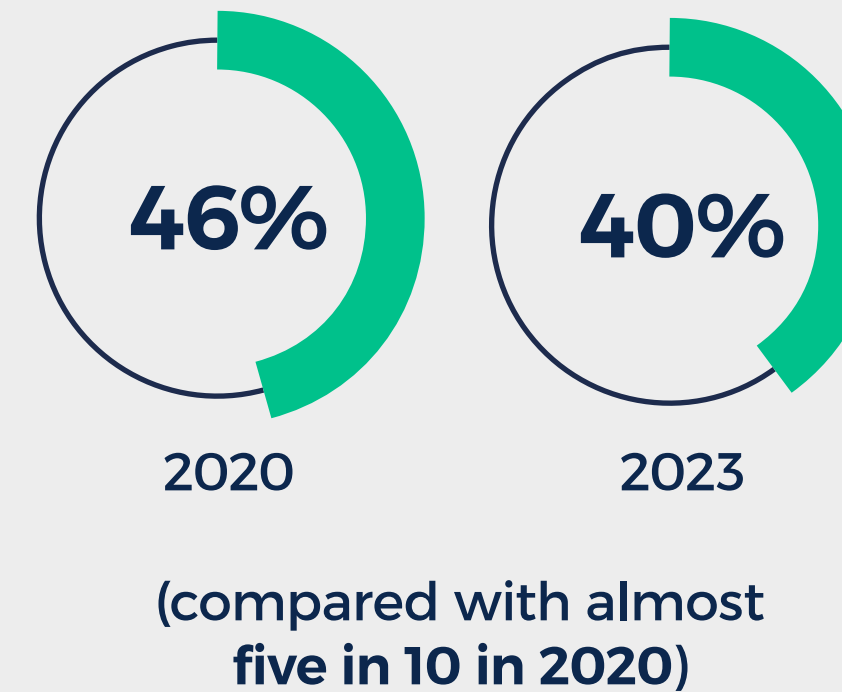
wrongdoing, and almost three in 10 (28 per cent) respondents would go to the authorities if the incident wasn't handled properly initially.

- Finally, there has been a notable increase (4.5 per cent) in the number of respondents who said that they would raise their concerns on social media. Employees in the United States in particular are now much more likely to rely on social media as a whistleblowing channel where they believe that their report has not been adequately handled the first time around, with 15 per cent of respondents now saying they would turn to social media if they felt dissatisfied compared with just 3 per cent in 2020.

Encouragingly, there has been a substantial uptick in the proportion of respondents who felt that their organisations encouraged whistleblowing: 54 per cent in 2023 compared with 41 per cent of respondents in 2020. This confidence varied by region: more than seven in 10 respondents in Hong Kong (73 per cent) and the United States (72 per cent) believed that their organisation encouraged whistleblowing; the figure was closer to four in 10 in Germany (43 per cent) and France (35 per cent).

However, despite this increase in confidence at manager level, most respondents did not think this confidence had filtered down to the general employee population, with only three in 10 respondents (34 per cent) believing that an 'average employee' would believe that senior management was in favour of whistleblowing.

Only four in 10 would now blow the whistle to their line manager if they knew of any wrongdoing



Our survey indicates that the two most significant factors that would prevent a whistleblower from raising concerns are the same in 2023 as they were in 2020: a concern that whistleblowing would harm reputation or career prospects and that their report would not remain anonymous, with neither factor showing a material increase or decrease in significance. However, there was a significant jump

4.5%

increase

There has been a notable increase in the number of respondents who said that they would raise their concerns on social media

in the number of respondents who felt that a lack of awareness about whistleblowing procedures would prevent a whistleblower from raising concerns internally (36 per cent in 2023, compared with 28 per cent in 2020).

03 The importance of up-to-date whistleblowing procedures and knowledge of them

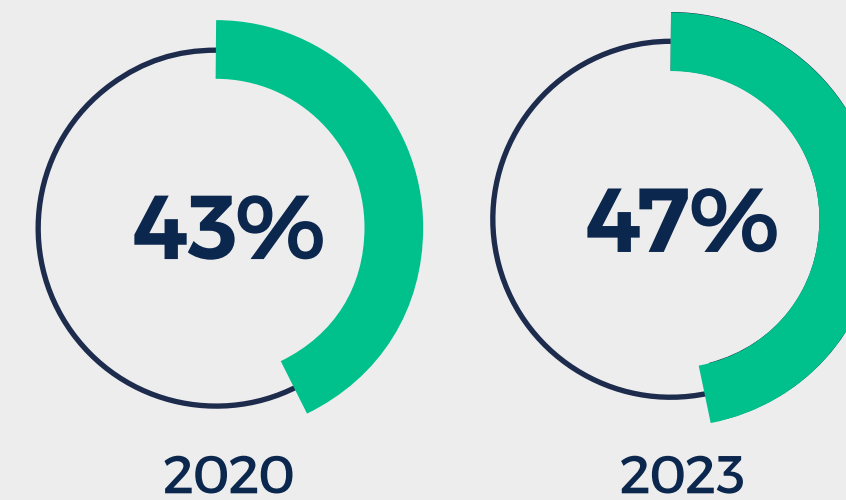
There was a slight increase in respondents who felt that the ‘average employee’ at their company would be aware that a whistleblowing policy was in place, and therefore would know what to do should a whistleblowing incident occur (47 per cent in 2023, compared with 43 per cent in 2020).

Despite this, the survey highlighted that companies often fail to publicise their whistleblowing procedure which increases the risk that employees will be unaware of its existence: a quarter of respondents (25 per cent) reported that, while there was a whistleblowing procedure in place, it had not been publicised (but this was not a significant change from three years ago).

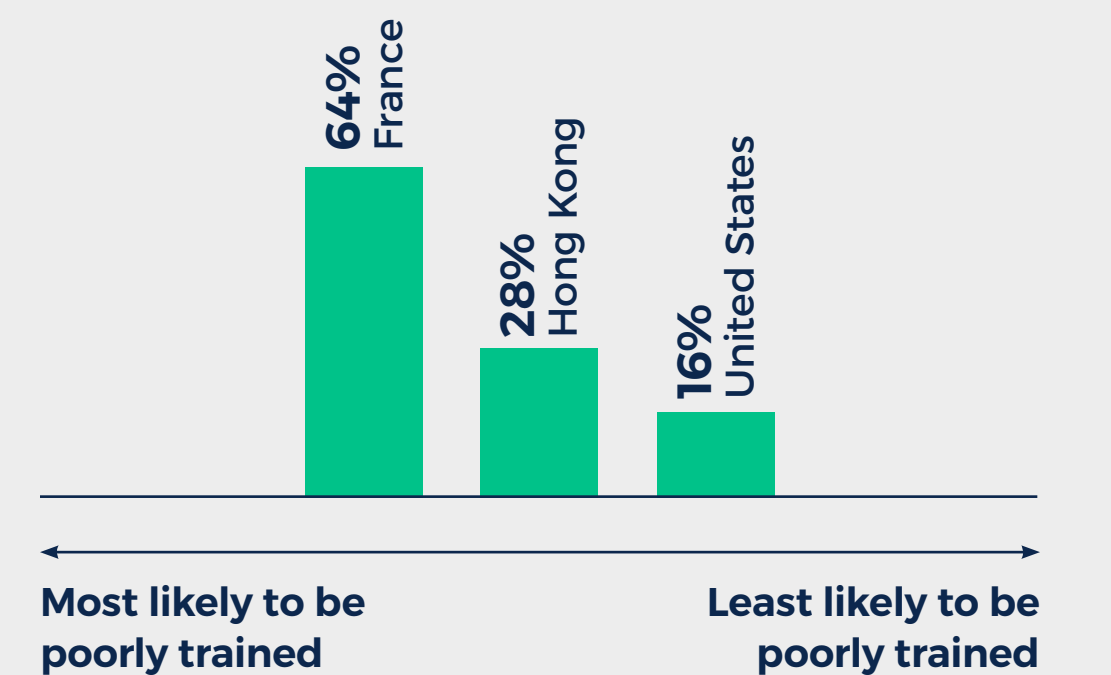
The level of employee awareness of internal procedures varies by country. Respondents in the United States seemingly had the most awareness (62 per cent), whereas respondents in Germany (31 per cent) and France (30 per cent) were less aware. These figures suggest that companies operating in the EU would be well advised to focus on increasing employee awareness of whistleblowing procedures and to better align themselves with the expectations set out in the EU Whistleblowing Directive.

In addition to concerns around lack of awareness, a significant number of respondents felt that managers were not properly trained on whistleblowing procedures, with a quarter of respondents (25 per cent) overall believing this to be the case. This was most likely to be the case in France where more than six in 10 respondents (64 per cent) believed managers were not properly trained; the same concern was more muted in the United States where only 16 per cent of respondents reported concerns about manager training and in Hong Kong where only 28 per cent of respondents reported the same. Having robust internal reporting procedures is a crucial step towards building a healthy speak-up culture. But those procedures will only be effective if employees know about them and managers are trained effectively on how to operate them. Our survey suggests that organisations may wish to review how regularly they inform their employees about their whistleblowing procedures and also what type of training they are providing to managers and how often. These are easy fixes that could achieve a great deal.

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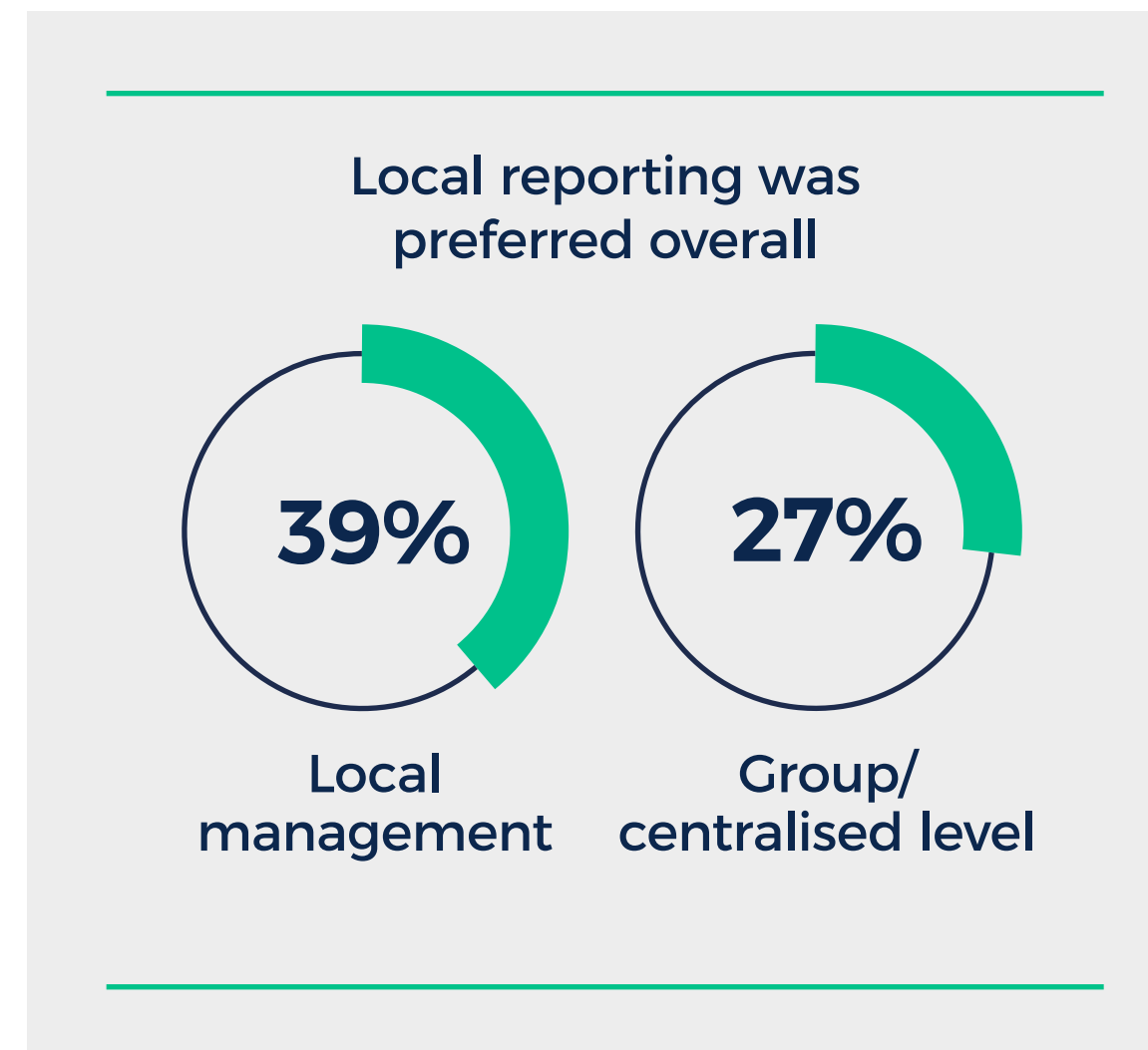
04 Local versus centralised reporting

One issue looked at by our survey was whether respondents who work in international organisations would prefer to raise an issue with local management instead of at group/centralised level.

Local reporting was preferred in every country surveyed and overall (39 per cent of respondents overall preferred raising issues with local management, compared with 27 per cent who would prefer for the issue to be raised at group level). However, the margin by which local reporting was preferred varied significantly by country.

Respondents based in the United States felt most strongly about raising the issue with local management (57 per cent) with only 23 per cent saying that they would prefer to raise it at global level. Hong Kong respondents had the same preference, with 44 per cent of respondents being more comfortable raising the issue with local management rather than at group level (which was favoured by 35 per cent of respondents).

Less stark differences were seen in France (where 28 per cent of respondents preferred local reporting compared with 24 per cent who preferred global reporting) and Germany (where 34 per cent of respondents felt more comfortable raising concerns with local management compared with 30 per cent who preferred global reporting). While respondents in France and Germany were fairly equivocal about whether local or global reporting is preferable, the EU Whistleblowing Directive is clear that employees should be able to report locally if they wish to do so – it expects organisations to establish their own local reporting channels and investigation processes. Although this ‘group versus local’ issue has been interpreted differently by different member states, the Commission’s view is that local reporting channels must exist, and if they co-exist with centralised group reporting channels, the whistleblower must have a choice about which channel to use. The rationale for this requirement is that proximity will facilitate reporting, with it being essential that channels are easily accessible to the whistleblower.



05 The effectiveness of financial incentives

A greater proportion of respondents than in 2020 now believe that if financial incentives were used to encourage whistleblowing this would have an impact on their organisation (a 7 per cent increase). Respondents fall into two camps – those who view the use of financial incentives with caution (which remains the significant majority) and those who are more receptive to the positive role financial incentives can play in a whistleblowing framework.

The country with the most drastic shift in attitudes was the United States. In 2020, 39 per cent of United States respondents felt that financial incentives would have no effect on the organisation at all, positive or negative. This decreased to 5 per cent in 2023. Attitudes in the United States towards financial incentives generally remain positive.

43 per cent of United States respondents felt that financial incentives would ensure employees abide by the rules (up from 19 per cent in 2020). 33 per cent of United States respondents thought they would encourage openness (up from 20 per cent in 2020).

Positive attitudes towards financial incentives among United States respondents are aligned with those of United States government agencies which continue to make substantial financial awards to whistleblowers. In 2023, the SEC made the largest ever award in the agency's history, awarding a whistleblower nearly \$279m¹, and in 2022 the SEC gave an award of over \$266m to the former VP of Biogen, as a part of the company's settlement with the Department of Justice². The SEC has also set the precedent of providing awards to whistleblowers who contribute to its investigations, such as the \$37m award given to a whistleblower who 'significantly contributed' to a government investigation³.

Overall the proportion of respondents who believe that financial incentives would encourage openness in the organisation (23 per cent up from 19 per cent in 2020) is now almost identical to the proportion of respondents who believe that financial incentives would encourage secrecy (22 per cent up from 19 per cent in 2020).

7%
increase

A greater proportion of respondents than in 2020 now believe that if financial incentives were used to encourage whistleblowing this would have an impact on their organisation

¹ [SEC.gov | SEC Issues Largest-Ever Whistleblower Award](https://www.sec.gov/SEC-issues-largest-ever-whistleblower-award)

² [Office of Public Affairs | Biogen Inc. Agrees to Pay \\$900 Million to Settle Allegations Related to Improper Physician Payments | United States Department of Justice](https://www.justice.gov/opa/record/biogen-inc-agrees-pay-900-million-settle-allegations-related-improper-physician-payments)

³ [SEC.gov | SEC Awards More Than \\$37 Million to Whistleblower](https://www.sec.gov/SEC-awards-more-than-37-million-whistleblower)

06 The importance of knowing the identity of whistleblowers

Knowing the identity of the whistleblower is important to more respondents than it was in 2020 (63 per cent of respondents up from 50 per cent in 2020). This is more consistent with the responses that our survey recorded on this issue back in 2017 (59 per cent).

The most notable shift in attitudes comes from the United States. In the United States, 81 per cent of respondents now think it is important to know the identity of the whistleblower (up from 24 per cent in 2020). Responses in Hong Kong (70 per cent), France (55 per cent) and Germany (61 per cent) remained broadly similar to the overall average. United Kingdom respondents were the least likely to believe that knowing the identity of the whistleblower was important (48 per cent of respondents up from 31 per cent in 2020).

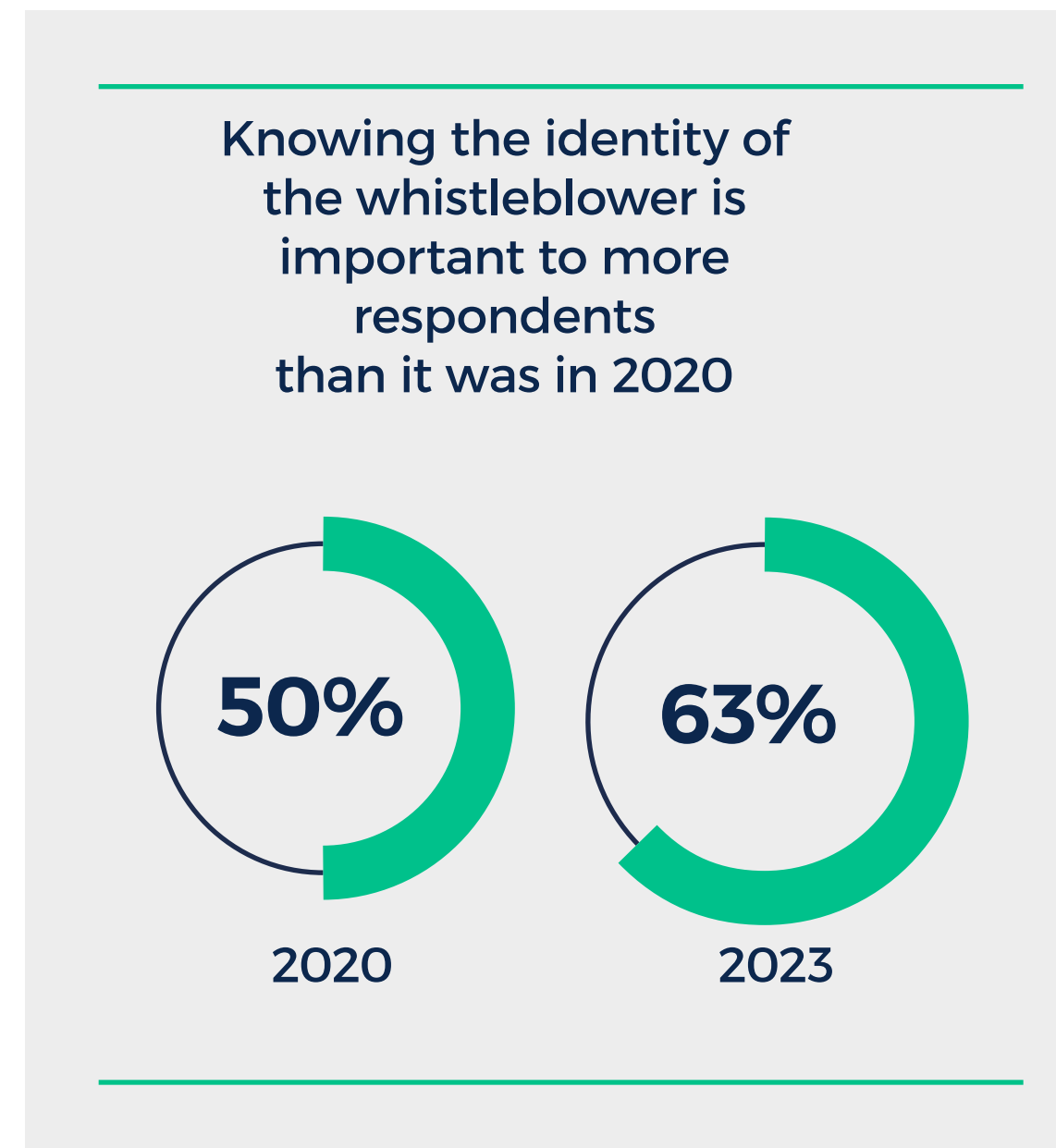
A preference to know the identity of the whistleblower contrasts with various legal requirements on anonymous reporting in jurisdictions like the United States, where the Sarbanes-Oxley Act requires that United States public companies facilitate anonymous disclosure. In other countries, like Germany and France, there is no legal requirement for companies to set up anonymous reporting channels and indeed the EU Whistleblowing Directive recommends that employers do not encourage anonymous disclosures. In the United Kingdom, anonymous reporting channels are required/encouraged in some areas, for example, in the UK Corporate Governance Code

(applicable to listed companies) and the FCA/PRA Handbooks (applicable to the financial sector).

The results of our survey suggest that respondents may appreciate the issues which come with anonymous reporting, namely that it can make it much harder for an organisation to investigate. To give employees the confidence to raise concerns confidentially but not anonymously, it is important for organisations to increase workforce confidence in their internal procedures and to ensure that employees understand how a report would be handled, including that the identity of the whistleblower will be protected and only shared where necessary.

The survey results may also suggest a concern among respondents that a guarantee of anonymity could result in employees making reports which are either malevolent or solely motivated by self-interest.

Attitudes to anonymous whistleblowing varied across age groups. Younger age groups felt particularly strongly that it was important to know the identity of the whistleblower (81 per cent of respondents overall aged 16-24 up from 69 per cent in 2020, and 68 per cent of respondents aged 25-34 up from 57 per cent in 2020). Older age groups were more likely to be equivocal on the issue, with 55 per cent of respondents aged 45-54 and 53 per cent of respondents aged 55+ believing it was important to know the identity of the whistleblower.



07 The impact of #MeToo on whistleblowing

While not a new factor, the #MeToo movement has continued to have a real impact on whistleblowing culture:

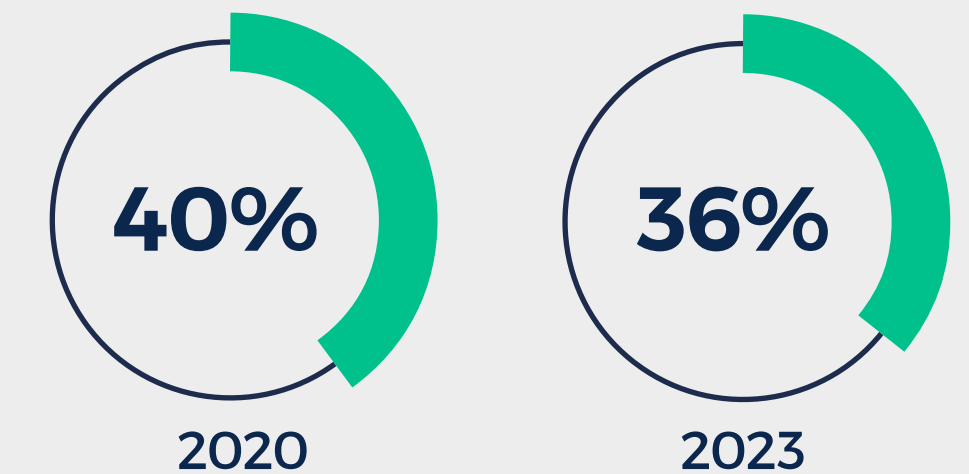
- Almost 28 per cent of respondents thought that #MeToo had prompted their companies to improve their whistleblowing procedures (up 10 per cent percent from 2020).
- Employees now feel more comfortable about blowing the whistle as a result of #MeToo. More than three in 10 respondents thought that this was the case for others in their company (a 10 per cent increase on 2020), rising to 35 per cent of female respondents (a 15 per cent increase on 2020).

However, while there have been improvements to whistleblowing culture coming out of #MeToo, this does not seem to have resulted in more people understanding what constitutes unacceptable workplace behaviour (with only 36 per cent of 2023 respondents reporting that it had resulted in greater understanding compared with 40 per cent in 2020). These relatively low figures suggest a need for organisations to review their training more broadly than just whistleblowing, to encompass unacceptable workplace behaviour topics such as sexual harassment.

Almost
28%
of respondents

thought that #MeToo had prompted their companies to improve their whistleblowing procedures (up 10 per cent from 2020)

However, while there have been improvements to whistleblowing culture coming out of #MeToo, this does not seem to have resulted in more people understanding what constitutes unacceptable workplace behaviour



08 The effect of remote and hybrid working on whistleblowing

In 2020 there were mixed views on whether the working practices seen during COVID-19 would impact whistleblowing.

Over three years on from the outbreak of the pandemic and with remote and hybrid working now firmly embedded in many organisations, the proportion of respondents who think that these ways of working have had a long-term impact on whistleblowing is high (85 per cent). This view was most prevalent in the United States (94 per cent) and Hong Kong (98 per cent) dropping to 72 per cent in France. Interestingly, this view was also most prevalent among younger colleagues (91 per cent for respondents aged 25-34, dropping to just 66 per cent for respondents aged 55+).

Although there was broad agreement that there had been a long-term impact, opinions were split over the 'why' and 'how'. Some respondents felt that remote and hybrid working had resulted in less whistleblowing because they were less likely to see or hear issues that might give rise to concern (29 per cent). Other respondents reported that employees generally felt more comfortable blowing the whistle because of the privacy afforded by home-working (29 per cent). Privacy was more likely to increase comfort in reporting among younger respondents (32 per cent of those aged 25-34, compared with 20 per cent of respondents aged 55+).

There was also an increase in the number of respondents who thought that employees were more likely to report externally or on social media – in this case because of a feeling that employees are less connected with the organisation (28 per cent). There was a clear distinction between age groups with this view most likely to be held by younger colleagues (34 per cent for respondents aged 35-44 and dropping to 16 per cent for respondents aged 55+). This suggests that whistleblowing, and in particular whistleblowing to external sources, may continue to increase as younger colleagues move through organisations.

85%
of respondents

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28%
increase

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