Policies and procedures are all well and good, but...

4 December 2018

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[Presented at the PID Practitioner Forum on 4 December 2018]

ISBN: 978-1-925885-02-6
One of the recent findings from the *Whistling While They Work* research project that struck me is that the presence or absence of internal reporting related official policies and procedures — at least as these are reported by organisations — do not in themselves affect outcomes for those who report wrongdoing.¹

Professor Rodney Smith of the University of Sydney who conducted this analysis notes that part of the reason seems to be that there is no clear, direct relationship between the official policies that organisations claim to have, and the organisational support that individuals who report wrongdoing actually experience.

Whistleblowers in organisations with what might be considered ‘weaker’ official policies were no less likely to receive most kinds of support than those in organisations who reported that they had ‘stronger’ policies.

There are at least two possibilities for the lack of any consistent pattern:

1. The reality in organisations may differ from what they said in responses to the Survey of Organisational Processes and Procedures.

2. The mere presence of particular formal policies and procedures may not, in itself, have a direct effect on whistleblower outcomes, since policies and procedures that exist on paper may not be implemented in practice.

I think it is a bit of the first, and a lot of the second, which accords with my own experience over twenty years looking at how agencies manage disclosures and the people who make them.

In recent years, we have seen cases where experienced and senior managers have taken overt actions, or have been complicit in overt actions, that an objective assessment would see as detrimental to the reporter.

Even in circumstances where the managers have recognised that a report is a PID — and it appears to us they are likely to be aware of their legal obligations to protect reporters — there was insufficient evidence to justify the overt actions taken in these cases.

In one case:

- After a senior executive made a PID alleging corrupt conduct about another senior officer, decisions were made to downgrade the reporter’s role and to make structural changes so that the reporter would have no direct reports.

- An external investigator, whose investigation our office monitored, was unable to find any evidence of reprisal as defined in the PID Act. However, it was not surprising that the reporter had perceived that the PID was related to the action to change the reporter’s role—given the timing of the restructure and the involvement of people implicated in circumstances leading to the reporter’s allegations.

- Ultimately, the agency decided not to proceed with the downgrading of the role.

We have received many similar claims of reprisal in the context of restructures. In all of the cases that we dealt with it was clear that the public authority had failed to appreciate that certain decisions or changes could be perceived as reprisals.

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One explanation for this behaviour, of course, is that they were intentionally trying to damage the reporter and did not believe that their actions would be questioned. However, if that was the intention we would expect to see attempts to hide, camouflage, rationalise/justify the actions taken, or at least to explain why the actions taken were reasonable in the circumstances. In the cases in question we saw no such attempts.

An alternative explanation, and one we believe to be more likely, is a phenomenon that can be described as ‘blind spots’, where despite understanding the threshold, process and obligations to which they are bound managers do not identify or action issues appropriately.

We also see management blind spots in cases where there is a failure to recognise conflicts of interests or to remove those implicated in the alleged wrongdoing from making decisions that may affect the reporter’s employment.

### Management ‘blind spots’

- **Annoyance or resentment**, if the allegations are perceived as an inconvenient intrusion affecting operational effectiveness (particularly if they think the allegations are unfounded, about a relatively minor matter or motivated by a personal grievance or the reporter being performance managed).

- **Affront or offence**, if the allegations are about them or close colleagues (again, particularly if they think the allegations are unfounded, about a relatively minor matter or poorly motivated).

- **Embarrassment**, if the allegations concern them personally or actions / inactions for which they are responsible.

- **Humiliation**, if the allegations that caused embarrassment turn out to have substance and become known to superiors, Ministers or the media.

For example, I remember being in a meeting with a head of a department, discussing an investigation being conducted by our office into allegations by a number of whistleblowers, that had also been aired publicly. He described this situation as humiliating.

The PID Act and related policies and procedures are based on an assumption that senior staff of public authorities will be ready, willing and able to comply with obligations to take adequate steps to effectively manage PIDs and the people who make them. This assumption ignores the potential influence of human nature on how management might react to PIDs.
Why do people make the decisions they do, even though they defy rational expectation? We wanted to explore the complex question of what is going on below the surface of managerial behaviours. We thought that some of the answers may lie in understanding the psychological factors lying outside conscious awareness that can negatively affect decision-making about the handling of PIDs.

People rely on a range of mental shortcuts—what are called heuristics—in order to make decisions. As Professor Kath Hall, one of the researchers on the Whistling While They Work 2 research project, has noted:

It is probable that people unconsciously react first to situations, and then consciously reason through their decisions and behaviour in relation to those situations. This process can happen so fast that it is all perceived as being part of authentic and conscious act of evaluation.2

There are a range of cognitive and motivational biases that might impact on how managers of an authority respond to internal reports.

Cognitive biases are mental shortcuts, often based on irrelevant considerations, that can distort reality.3 They can allow us to act quickly, but can also lead to errors of thinking and irrationality. Over 170 cognitive biases are listed in Wikipedia.4

Other motivational biases arise because we are consciously or unconsciously motivated to seek or avoid a particular outcome, perhaps because of self-interest, social pressures, wishful thinking or the like.5

Today I will focus on only some of the biases relevant to how managers respond to reports of wrongdoing.

**Confirmation bias** is when people tend to seek information that confirms, rather than disaffirms, their pre-existing perspective or beliefs.6 It suggests that people have a tendency not to see what they don’t want to see, such as wrongdoing occurring in their area of responsibility.

People commonly notice, pay more attention to, and accept information that supports their preconceptions or beliefs than to information that runs counter to, or might challenge, them. For example, managers may look for evidence that a reporter is a trouble-maker if that is how they view them. Those who are motivated to avoid an investigation because it poses a threat to their view, expertise or area of responsibility might assess an allegation as less credible — that is, distort the information—as a way to justify their decision not to take appropriate action.7

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When managers believe a conclusion to be true they are more likely to easily accept evidence that supports their view and believe supporting arguments. Conversely people are more likely to rigorously question evidence that poses a threat to their view (known as disconfirmation bias) and less likely to believe counter arguments. This is referred to in the literature as motivated skepticism, which is the mistake of applying more skepticism to claims a person doesn’t like than to claims they do.

Managers need to be aware of the possibility that their own motivation to believe or disbelieve a reporter, subject of allegations or witness can bias their evaluations of the information the person provides. It is well established in social psychology research that ‘people are typically reluctant to accept information that threatens a desired conclusion, whereas evidence confirming their position is generally welcomed’. I think Simon and Garfunkle aptly described this aspect of confirmation bias in their song 'The Boxer', with the words: ‘a man hears what he wants to hear and disregards the rest’.

Research by psychologist Tom Gilovich mentions the different questions people ask themselves:

- ‘Must I believe this?’ [for unpalatable conclusions]
- ‘Can I believe this?’ [for desired conclusions].

Things that can increase the risk of investigative confirmation bias include time pressure (exacerbated by heavy workloads), and the need for ‘cognitive closure’ (the desire to be able to reach a clear-cut opinion on a topic).

A good example of confirmation bias can be found in the responses to a Huffington Post survey of peoples’ reactions to the much talked about Trump Press Conference on 16 February 2017. The survey found that most people who tuned in with pre-existing opinions of the president found their opinions confirmed:

- just 2% of Trump voters who paid attention to the press conference say it worsened their view of his actions or his temperament.
- by contrast, 60% of Clinton voters who paid attention say it worsened their opinion of Trump’s actions, and 56% that it worsened their opinion of his temperament.

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Taber & Lodge 2006.
The degree to which a person’s views may be susceptible to reason depends on the person’s sense of confidence about an attitude or opinion, i.e. the degree to which the person feels that his or her attitude or opinion is correct (referred to in the literature as ‘overconfidence’ or ‘attitude certainty’). People tend to overestimate their abilities which can cause risk taking. This may lead managers to:

- dismiss a report as being ridiculous
- believe they can handle a report themselves without formalising anything
- fail to seek expert advice from people in their organisation such as yourselves.

This phenomenon is referred to by Daniel Kahneman in his book Thinking, Fast and Slow. He argues that: ‘… neither the quantity nor the quality of the evidence counts for much in subjective confidence. The confidence that individuals have in their beliefs depends mostly on the quality of the story they can tell about what they see, even if they see little.’

Other biases suggest that, as peoples’ opinions on an issue solidify, it is harder to change their minds (‘choice supportive bias’ or ‘escalation of commitment’). This may lead managers who have previously chosen not to deal with wrongdoing to continue to hold this view even when confronted by a staff report about it. Managers who have chosen not to support the reporter are likely to recall more negative attitudes about that person.

‘Affect influenced bias’ occurs when an emotional predisposition for or against an outcome taints judgements. This bias can impact on how managers and investigators undertake their roles. For example, if they have formed a strong emotional preference for a particular outcome, or a

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17 Kahneman 2012, p 87.
18 Bri Williams 2018, Nudging management of whistleblowing complaints: Behavioural analysis and recommendations.
particularly favourable or unfavourable view about the motivation or morality of a reporter or subject of allegations, this could influence what evidence they collect, how they assess that evidence, and their assessment of the credibility of witnesses.

There is also a natural human tendency to ‘shoot the messenger’—that is, to dislike a person who brings us unpleasant information, even when that person did not cause the bad news.20

People tend automatically assume that a problem was due to the character or behaviour of the person they see as responsible (that it reflects their personality, or was intentional or negligent), and conversely assume that if they were responsible for the problem it was not their fault as there were circumstances outside their control.21 This is called ‘fundamental attribution error’ and can lead managers to blame the reporter, rather than the situation, while not admitting any personal failure to manage their workplace appropriately.

Conversely, managers may fear regulatory processes and reputational damage.22 ‘Loss aversion’, for example, means that people are likely to be more motivated to avoid loss than to seek a gain. They may therefore keep quiet about an issue or limit the investigation of allegations that have the potential to reveal errors or wrongdoing that, in hindsight, they should have uncovered earlier. This phenomenon is also referred to as information avoidance.

People can also feel overwhelmed by the options to manage reports (the ‘paradox of choice’).23 We see this particularly in large organisations where there are multiple avenues and policies for both making and dealing with staff reports (including grievances, misconduct matters, PIDs, clinical incidents, work health and safety), which can result in similar matters being dealt with in very different ways. Because things that come easily to mind are often relied on, a manager may treat a report as a grievance or performance management issue instead of a PID simply because they know that process.

Finally, ‘processing fluency’ means that things that are easy to read or comprehend tend to perceived as easier to act on.24 If policies or processes make handling a report of wrongdoing difficult, a manager may be more likely to ignore it. This extends to incidental factors, such as how material is laid out on a page and the font that is used.

In one study, participants read identical instructions for an exercise routine in easy-to-read and difficult-to-read fonts. Participants estimated that the exercise would take 1.8 times as long when the font was more difficult to read. They also reported a greater willingness to make the exercise part of their daily routine when it was easy to read.25

20 Kunda 1990.
22 Williams 2018.
25 Song & Schwarz 2008.