

## REGULATORY INTELLIGENCE

**Employee engagement and ethical culture**

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A combination of factors, including the war for talent, changing employee expectations about work and a string of high-profile incidents, have brought the subject of an ethical organisational culture to the top of the business agenda. The Edelman Trust Barometer shows that 60% of individuals will choose a place to work based on their beliefs and values.

Cultivating an ethical culture is now more crucial than ever, from a regulatory, employment law and employee engagement perspective.

**Regulatory perspective**

The Financial Conduct Authority (FCA) has emphasised the importance of firms cultivating the right culture for some time. The FCA focuses on culture and governance by looking at key drivers of behaviour that may cause harm. These include:

- the firm's purpose;
- the role of leadership;
- the firm's approach to managing and rewarding people; and
- the effectiveness of the firm's governance arrangements, controls and key processes.

The [Senior Managers and Certification Regime](#) (SMCR), with its focus on individual accountability, is central to fostering the right culture. The FCA has made a number of statements since its inception which explain how non-financial misconduct may impact on fitness and propriety (due to its link with integrity). Failure to tackle non-financial misconduct may discourage employees from speaking out about matters that create regulatory risk.

Having an effective speak-out culture is a critical risk management tool. The [FCA rules on whistle-blowing](#) make it clear that detrimental treatment of whistleblowers is a fitness and propriety issue.

The FCA has also indicated how the individual conduct rules impose broad obligations that create a "tone from within" that is integral to the firm's risk management. In March 2021, Mark Steward, executive director of enforcement and market oversight, [explained](#) how the FCA expects firms to ensure that every employee takes responsibility for regulatory compliance.

Although these rules and expectations have been in place for some time, culture remains a key area of focus for the FCA. In September 2021, [Sheldon Mills](#), executive director, consumers and competition, said culture remained central to how the FCA supervises regulated firms.

"Firms with healthy cultures are less prone to misconduct" and that "evidence increasingly shows they are also more likely to perform better," he said.

The FCA wants firms to have a clear purpose that contributes to positive consumer outcomes. With greater hybrid working, firms may need to work harder to ensure that the leadership retain oversight and accountability and that employees can speak up through new and existing channels.

The FCA is particularly interested in the role of leadership in creating a culture of inclusion where diverse views are welcomed. Recent publications have indicated that there will be greater regulatory focus on this issue, with data playing an important part in identifying issues and monitoring progress against objectives. We are likely to see more guidance on this subject in the next year as we await the response to the FCA's discussion paper [DP 21/2](#) on diversity and inclusion.

**Employment law perspective**

A toxic culture where employees feel afraid to speak up about wrongdoing creates legal risk. There are numerous situations where the wrong environment has led to complaints of harassment, discrimination, bullying and victimisation. In addition to high value claims, employers may face regulatory intervention (from the FCA or the Equality and Human Rights Commission (EHRC)).

The EHRC has used section 23 agreements to ensure that employers take remedial action where adverse findings in Employment Tribunal proceedings have revealed cultural failings. The FCA has a range of investigative powers that enable it to seek information from firms. Its whistle-blowing page explains how complaints about senior managers may lead to enquiries about organisational culture.

The importance of having a speak up culture will become even more acute as member states implement the [European Whistleblower Directive](#). The directive requires firms to have procedures in place to allow employees and others to raise concerns about breaches



of European Union law. There are set timescales for acknowledging receipt of the concern and providing feedback. The directive also emphasises the importance of confidentiality and anti-retaliation.

### Employee engagement

Having the right culture is a key driver of employee engagement (the emotional commitment an employee has to the organisation, according to Forbes), which in turn increases retention, generates higher performance and decreases risk. Research by Hough, Green and Plumlee<sup>[1]</sup> examined how an ethical environment creates organisational trust, which leads to a more engaged workforce.

The evolution of hybrid working has brought discussions on leadership visibility to the fore. Employees respect leaders who are authentic, transparent and do the right thing in challenging circumstances. Job applicants cite being purposeful and values-driven as being among their top requirements of an employer.

Appropriately, integrity has become a common corporate value and must underpin the company's way of working – engagement and belonging will be greatest when employees feel personal alignment with the company's values. While the drivers of employee engagement are not universally agreed, values, leader integrity, communication and clarity, fairness and psychological safety are often cited.

It is important to note that the impact on the bottom line is significant. Business units in the top quartile for employee engagement generate 23% more profit than those in the bottom quartile (according to research by [Gallup](#)).

### How should leaders use communication strategies to create an ethical culture?

- *Define your goals.* The widely used Know-Feel-Do communication model is a helpful starting point – employees need to know what ethical behaviour looks like and what their organisation's expectations are, feel that if they report an incident it will be treated seriously and be familiar with what they should do if they have a concern.
- *Be clear on expectations.* Formally sharing behaviour expectations with employees is an essential step – 2018 research by the Institute of Business Ethics found that 67% of employees are more likely to speak up about misconduct when a framework is in place. The framework should be written in plain English, communicated directly to all employees (via email and compliance training etc.) and cascaded via line managers.
- *Foster behaviour change.* The role of champions should never be underestimated – leaders and influencers within the organisation role modelling the desired ways of working.
  - Reward ethical behaviour and a speak up culture and celebrate this in existing employee communications. Real life examples are significantly more persuasive than a framework alone and help demonstrate that the organisation is translating words into actions.
  - Having, and adequately promoting, an external or semi-external (e.g. an NED) champion can be valuable – particularly where trust is low.
- *Stay close to your people.* Your employee communications team are specialists in understanding internal audiences and will partner with you to ensure employee voice is part of your culture. Employees need to feel heard. Karian & Box's 2021 study of 872,000 UK employees (30% from banking/financial services) found that personal visits and small group chats by leaders had the greatest impact on employee trust in their leadership. Prioritise these two-way communications.

[1] Journal of Legal, Ethical and Regulatory Issues, Volume 18, Number 3, 2015

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