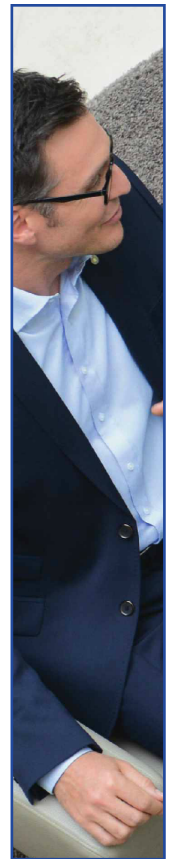


# Ombuds programs: creating a culture of trust rather than compliance

- The value of organizational ombuds is in their confidentiality and neutrality
- Retaliation from managers or co-workers can be very difficult to address
- Few companies are measuring the effectiveness of their ombuds programs
- The best ombuds programs are deeply integrated into the company's culture

By David Bogoslaw



In one of the final episodes of *Mad Men*, Joan Harris gets some invaluable advice that helps her navigate an uncomfortable situation at a new ad agency, where she has discovered systemic sexism. Joan happened to have access to that kind of guidance from someone in her private life with lots of business experience, but employees at most companies aren't as fortunate.

Nor will employees be able to get guidance on an anonymous compliance hotline designed for reporting fraud and other cases of suspected misconduct. Most hotlines are outsourced to third-party providers and staffed by people trained to ask a few questions and file a report. Unfamiliar with the caller's company culture and how things work there, hotline workers are in no position to give employees what they need most: an independent, trained ear. (In the *Mad Men* case it could be argued that Joan would have been better prepared for the maelstrom unleashed by talking to her boss if she had had advice from an insider familiar with her firm's culture.)

Even when the hotline is staffed from within the

caller's company, the people who take these calls aren't trained to explain an employee's options. And the reality is that because employees know they are setting an investigation in motion by contacting a hotline, some will never make the call in the first place. How often these unvoiced complaints fester and lead either to lawsuits or people quitting their jobs is anyone's guess, but such scenarios can be expensive for the company when they occur.

Organizational ombuds serve in an advisory capacity and are better suited to dealing with employment issues than the classical ombuds more often used in government agencies for citizenry or regulated community issues. It's not investigative abilities that make the role valuable; it's the neutrality and confidentiality an employee is assured of when he or she comes in with a problem. But while corporate compliance programs are nearly universal nowadays, an ombuds office remains rare. A 1997 survey by Pepperdine University School of Law and Cornell University found that just 10 percent of Fortune 1000 companies had an ombuds program.

John Zinsser, co-founder and principal of Pacifica Human Communications, a consulting firm that designs, implements and assesses ombuds programs, says he's more confident that 5 percent to 6 percent of Fortune 500 companies have an ombuds program.

### Improving engagement

Finding ways to help employees come forward and discuss matters of concern is a challenge. Compliance hotlines are little used because people are uncertain who they're talking to, says Charles Howard, a partner at Shipman & Goodwin and author of *The organizational ombudsman*, a professional handbook. The matters reported on hotlines tend to be mostly HR-related and 'are not conducive to anonymity [nor] need counseling', he notes.

Polling 4,600 hotline and case management clients, NAVEX Global's '2015 compliance hotline benchmark report' finds that reporting volume was at a median of 1.3 per 100 employees in 2014. That's up 44 percent from 2010, NAVEX says, but still hardly evidence that such reporting channels are a ringing success. NAVEX also notes that the time needed to close cases increased to a median of 39 days in 2014 from 36 days the previous year, which is cause for concern because of 'the erosion of employee trust as time passes without action on a report'.

One key reason why compliance hotlines and other formal channels are less effective than hoped is fear of retaliation. The compliance profession came into its own 13 years ago after Sarbanes-Oxley became law, a response to corporate compliance failures at companies from Enron to WorldCom. The profession continues to mature, with more sophisticated and far-reaching employee training programs and growing appreciation for the role corporate culture plays in compliance and ethics. But an increase in substantiated reports of retaliation against whistleblowers in response to reports of misconduct, according to NAVEX, threatens to dissuade more employees from coming forward in the future.

One problem with retaliation by a manager is



**John Zinsser**

that it can be hard to prove, often taking the form of 'giving an employee the cold shoulder, giving a good assignment to a co-worker, or closer monitoring of an employee's work,' Howard writes in his book. Retaliation by co-workers can potentially be even more problematic: 'As it's almost impossible to prove under any circumstances, it is particularly immune to effective elimination by laws, company policies or codes of conduct.'

Oilfield services firm Baker Hughes has a business ethics helpline and an online reporting system for employees to raise concerns or ask questions about compliance issues. But its ombuds office gives employees 'another path, one they can feel totally comfortable with; they can have a positive experience and get information they wouldn't otherwise move to get,' says Alan Crain, senior vice president and chief legal and governance officer at the firm.

### Discovering the benefits

A major reorganization at Baker Hughes in 2009, around geographic regions where the company's products and services are being delivered rather than the product lines themselves, provided an opening to establish an ombuds program. As a result of changes in reporting relationships, 'employees weren't as comfortable with new supervisors and didn't know how candid they could be with them,' says Crain, who spearheaded the creation of the ombuds office.

Ensuring the new structure would work for tens of thousands of employees was a prime focus for senior management. The HR team surveyed all employees about what their issues were and some of the responses reminded Crain of discussions he had had a few years earlier with Zinsser when they had been introduced socially. Crain recalls having his interest piqued by hearing from Zinsser about the benefits an ombuds function can offer a company.

Those benefits stem from four defining characteristics of an organizational ombuds function: informality, neutrality, confidentiality and independence. Issues that an employee discusses with the ombuds won't be reported without the employee's express permission, and this is a significant advantage the ombuds office has over formal reporting channels. The only exception to the confidentiality rule is when an ombuds has good reason to believe imminent harm to an individual or the company will

be caused by not reporting the situation. Above all, employees must feel they have a safe place to go to be heard and to think through their options.

'It's mind-boggling to me that every public company does not have an ombuds office,' says Marcy Wilkov, chief ombudsman at American Express from 2006 to 2014. 'It's such a fabulous resource for employees that goes beyond just being an outlet for whistleblowers.' Wilkov says many people have told her over the years how proud they were 'to work for a company that cared enough about its employees to provide this confidential resource'.

American Express' ombuds program also began with an employee survey, initiated by a new HR officer brought in by the new chairman and chief executive, Harvey Golub, in 1993. At the time the company was undergoing some upheaval, including financial issues around its revolving credit card. The survey results suggested to Golub that he didn't know what was going on with the employees. He set up a task force – including the then corporate secretary, Stephen Norman – to look into creating an avenue for employees to raise issues, out of which came the recommendation to create the ombuds office. This was before the era of whistleblower laws and hotlines.

### Pfizer's ombuds program

Pfizer created its ombuds program in 2011 as part of a settlement of a shareholder derivative action. 'As part of their suit, plaintiffs felt if there were more avenues available for colleagues to come forward without fear of retaliation, it would have helped bring that former issue to the forefront,' says Timothy Shore, vice president and chief ombudsman for the pharmaceutical company. When he was asked to establish the ombuds program, Shore had been at Pfizer for more than 20 years, including 12 years in the labor and employment law group and a stint heading the HR function for the legal division.

With HR, a compliance department and an anonymous compliance hotline already in place, the initial reaction at Pfizer was, '*We sort of have that ground covered, so what are you adding?*' says Shore. 'Everybody thinks it's a little duplicative of what's already out there. And it's not until you explain to them that the key difference with the ombudsman really is around this duty to act, being able to provide somebody with that assurance of complete

confidentiality and being independent from the organization' that people begin to understand and appreciate its value.

Shore reports to the chief compliance and risk officer and also has direct access at all times of day to the board of directors, with whom he meets at least twice a year. Because of how the office is structured, Shore can't share any details about the matters being worked on with the chief compliance officer, but he is able to 'give him high-level information about the functioning of the office'.

Since the program's inception three years ago, more than 1,000 Pfizer colleagues – the company's term for employees – have used it, collectively raising more than 2,400 issues. Only the board is privy to the annual traffic numbers, Shore says. After providing the board with a list of organizational issues and trends the office has become aware of at particular company sites or in certain regions of the country, Shore will bring a matter to the attention of the appropriate business manager or HR leader for that person to consider looking into.

A significant percentage of the people who use Pfizer's ombuds office simply want guidance about how to talk to their supervisor, observes Shore. 'We are empowering employees to deal with these issues on their own,' he explains. 'We provide them with the tools to have a more constructive conversation with their manager or supervisor without the need for going to a third party and bringing in HR. By doing so, we are able to resolve issues much more effectively and efficiently, thus saving the company time and resources.'

'The investment is minuscule,' Wilkov adds. 'The budget is a rounding error, and the payback in some cases can be quantified if an important case originally surfaced through the ombuds office.'



Alan Crain

### Measurement and feedback

Measuring the cost-effectiveness of ombuds programs is not yet common practice, however. The one Fortune 200 company that has carried out a full return on investment assessment, to Zinsser's

knowledge, shows savings of \$22 for each dollar spent annually, he says.

Some of the distinguishing features of Baker Hughes' ombuds office, which opened in September 2012, are an information specialist position to ensure ample measurement of the office's contributions, a requirement in the company charter to evaluate program performance on a regular basis, and an ombuds governance committee (OGC), a diverse cross-functional body that supports and monitors the ombuds office.

At each quarterly meeting the OGC gets a report from the principal ombudsman who provides an update on the office's activity in the prior quarter, including outreach, employee usage and general feedback from working with employees. The ombuds office adjusts the form of its communications – print, web, video, in person – based on the OGC's feedback, and 'has improved its methods for reaching employees to explain the purpose and function of the office based on OGC suggestions,' says Crain.

The OGC was designed intentionally to include representatives from legal, HR, strategy, finance and operations 'so that each of these important stakeholders of the ombuds office is hearing from the ombuds office regularly and is weighing in with their impressions and perspectives,' Crain continues. And the OGC's at-large members ensure even greater connectivity between the ombuds office and front-line employees.

The OGC's involvement attests to how deeply integrated the ombuds function is within Baker Hughes' culture – something that Zinsser says distinguishes the best ombuds programs. A siloed program that reports to the head of a single department wouldn't build the functional relationships throughout the company that characterize a properly integrated program and that lead to two-way communication where 'the information that comes out allows leaders to make better choices,' Zinsser points out. It's the difference between a function that only does casework and one that's a piece of the operating culture, he adds.



**Charles Howard**

### On the radar

Zinsser acknowledges that independence, neutrality, informality and confidentiality don't fit well in most business organizations. The desire for more control 'makes it hard for leaders to accept having an organizational ombudsman, but when they do they're opening up a whole other dimension,' he says. He cites one firm that credits its ombuds program with uncovering as much as a quarter of its compliance issues, and likens it to radar: 'If the CEO and other leadership are the pilots of this plane, then all of a sudden they're functioning with 25 percent more information on the radar about what they're flying through. Don't you want the pilots to have that?'

Ombuds need to do a better job of answering senior management's concerns about their own accountability for any information that's known within the company, says Howard. One way to do this is through audits conducted by a third party that is recognized and respected, which would review the ombuds office processes and then provide a verification letter to management.

Another improvement currently being developed is a more robust way to track the data ombuds collect from employees who seek their advice. Ombuds typically don't keep permanent records of notes or communications. 'That's a key principle because they're informal,' Howard says. 'What they typically do, and should do, is keep statistical information.' That includes demographics about who is using them and categorizing issues raised with codes suggested by the International Ombudsman Association. This would enable companies to look at use, including the timing of certain issues to see whether they are spiking at significant times, Howard adds.

'This is the great value from a senior manager's perspective – to have this listening post,' Howard concludes. 'While they won't be telling you about the confidential conversation in any particular case, by having this overview of what's going on or where there may be systemic problems, the ombuds can give senior managers a sense of where there might be – in a particular division or facility – a higher-than-usual use or particular kinds of issues that seem to be pretty endemic.' <sup>CS</sup>

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