

WEBINAR

**SHOOSMITHS**

# Responding to whistleblowers

This webinar will begin at 10:00

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# Thank you for joining!

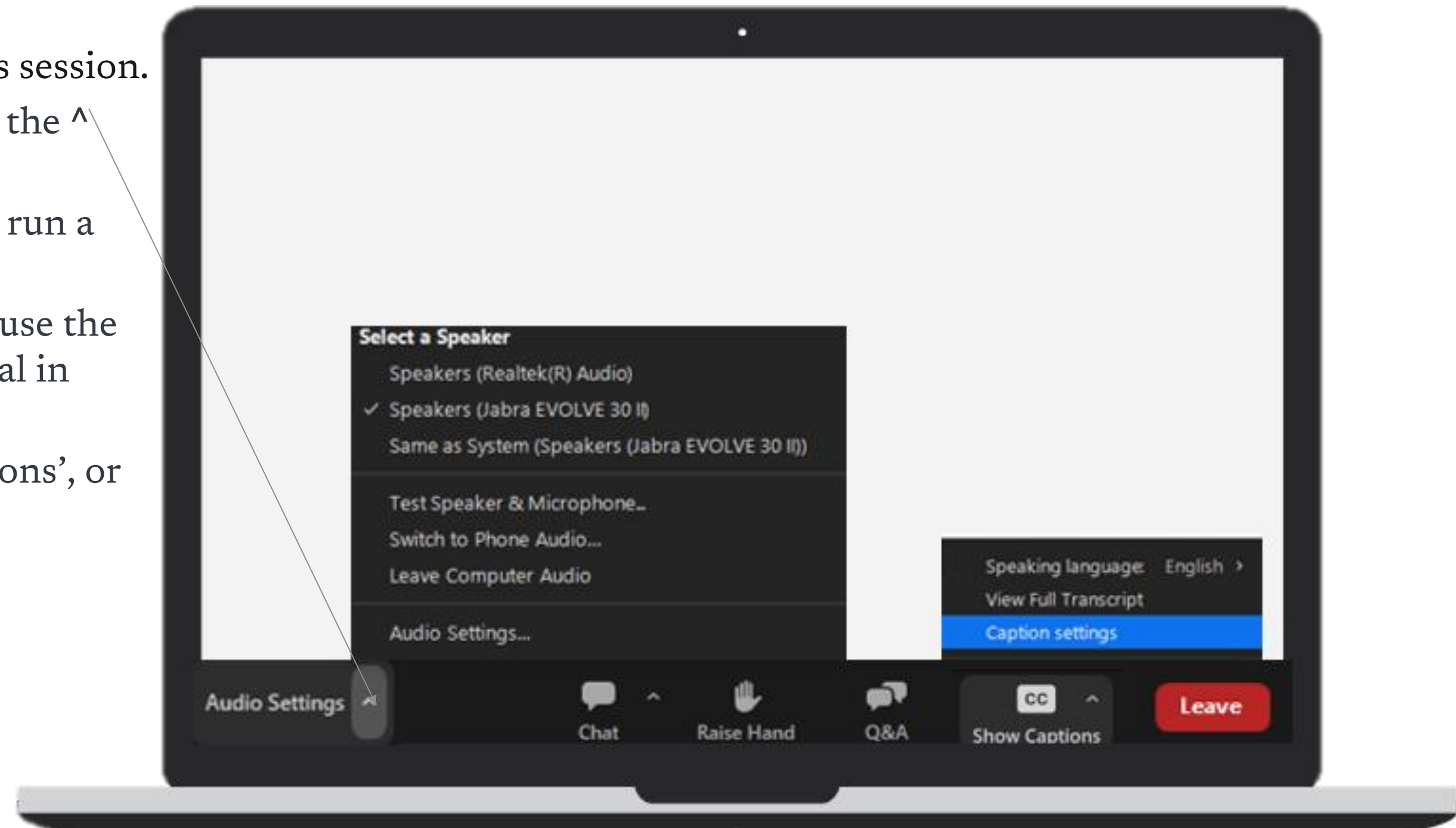
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**Please note:**

**The slide deck from the webinar will be shared following the session.**

**This session is being recorded.**




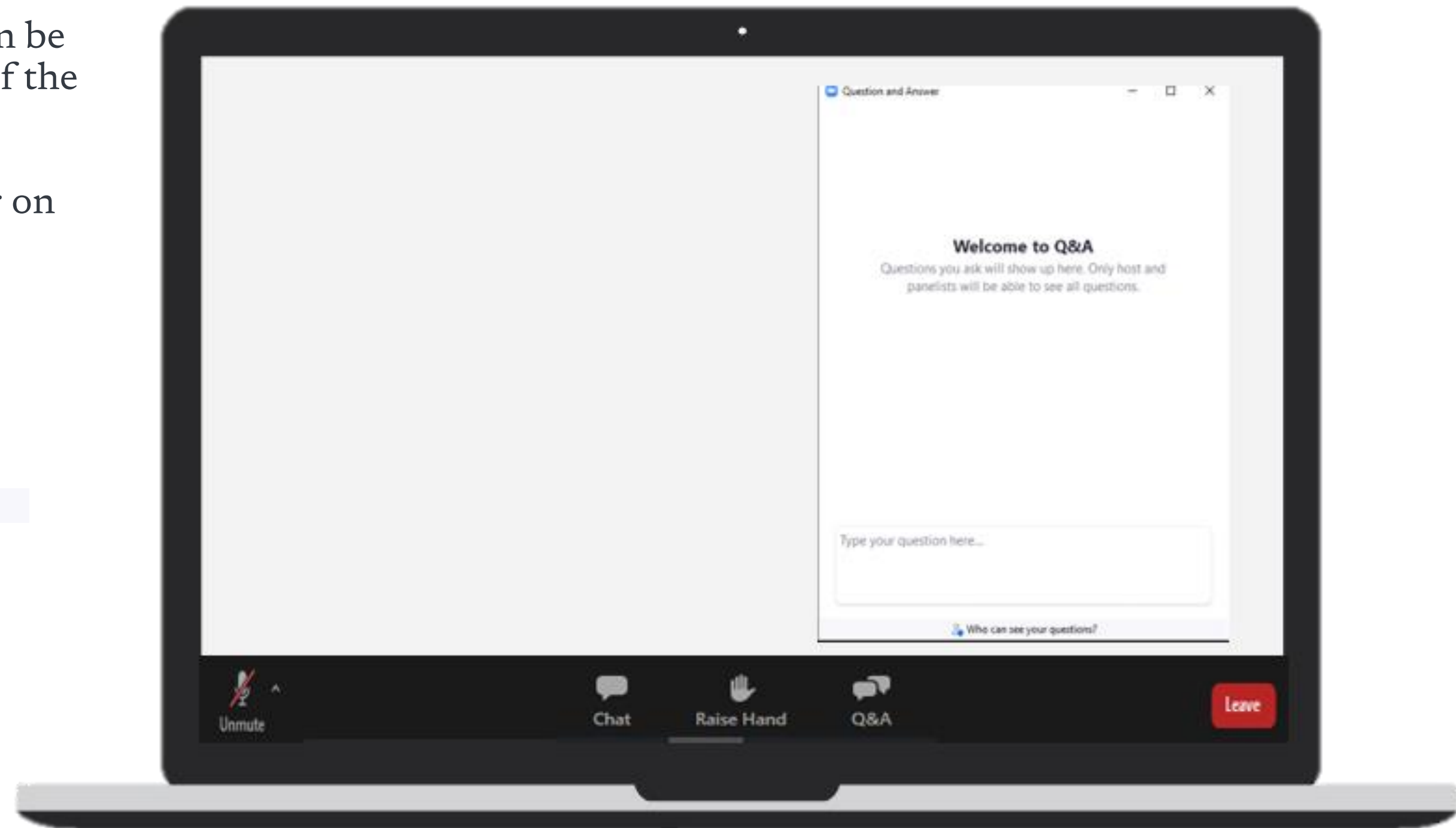
# Ask a question

Please ask questions through the Q&A panel, which can be launched by clicking the **'Q&A'** button at the bottom of the screen.

- Type your question in the box below and press enter on your keyboard to send

Type your question here...

 Who can see your questions?



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# Responding to whistleblowers

Protecting your employee brand series

Jonathan Naylor, Partner  
Shani Edwards, Associate

19 November 2024

## What we'll cover:

- Identifying protected disclosures
- Creating a culture of openness
- Getting the right policies and procedures in place
- Considerations when managing whistleblowers

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# Identifying protected disclosures

# Why is this important?

## #Metoo

- Global movement
- Empowered people to speak up against sexual abuse and harassment

## High profile

- Post Office
- Church of England
- Harrods

## ESG

- Environment and climate crisis
- Diversity, equity and inclusion

## Culture

- Ethical business practices
- Behaviours in the workplace

## Increase in cases

- Rise in cases of whistleblowing



# Legal Framework

## Key legislation

- Public Interest Disclosure Act 1998
- Employment Rights Act 1996

## Designed to

- Allow workers to draw attention to wrongdoing in the workplace
- Provide protection against detriment or dismissal for workers who report malpractice by their employers or third parties

## Who is protected?

- Employees
- Workers

## When are they protected?

- When a qualifying disclosure is made



# What amounts to a qualifying disclosure?

*“any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show...”*

(section 43B(1) of the Employment Rights Act 1996)

# What amounts to a qualifying disclosure?





# How to identify protected disclosures?



- They can be made in the ordinary course of business
- Aggregated emails, messages and conversations can amount to one protected disclosure
- They don't need to be made to someone in Compliance or Legal
- They can be included in other documents including grievances and feedback forms

# Are these protected disclosures?

- A text message from a cinema worker to their line manager raising concerns that some colleagues are not checking customer ID for films with a 15 or 18 rating.
- A conversation between two colleagues noting that their boss received an expensive designer handbag as a gift from a client.
- A series of Teams messages from a receptionist to the office manager asking when the fire risk assessment was last updated and flagging that paper recycling is left uncovered in the smoking area.

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# Creating a culture of openness

# Culture

Create an open and supportive work culture where workers feel safe and comfortable enough to raise disclosures without fear of retaliation.

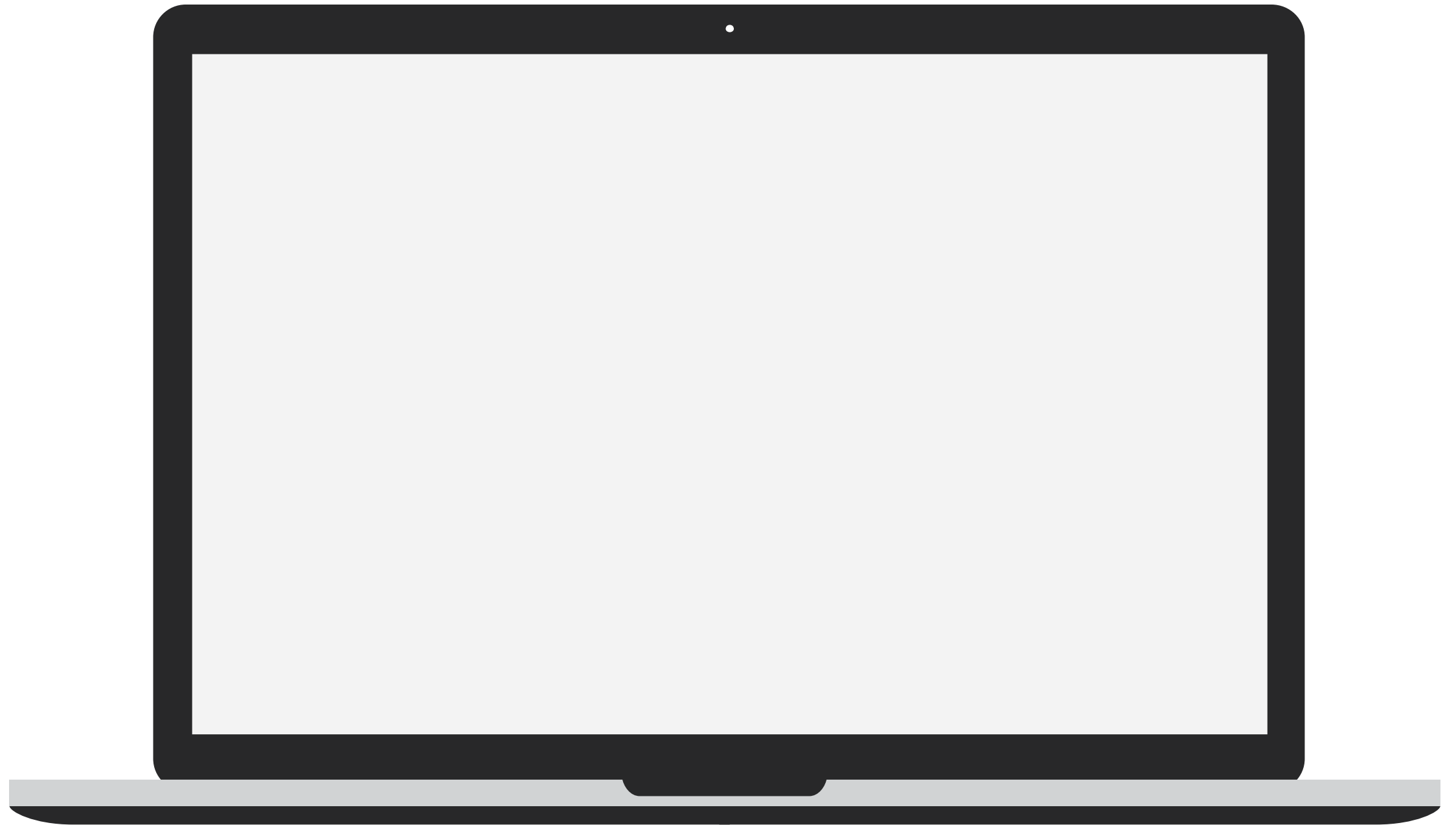
Workers will be less inclined to make a disclosure if they think that:

- Their complaint will not be taken seriously
- They will be mocked or ridiculed for making a complaint
- They will be penalised for making a complaint



# Communication

- If there is a whistleblowing policy in place, make sure it is easily accessible to all workers (e.g. on the staff intranet)
- If there is no policy in place, use the code of conduct, mission statement or staff handbook to encourage workers to speak up





# Take concerns seriously

- Don't dismiss concerns without proper consideration
- Take all concerns seriously
- Check in with the whistleblower about their concerns
- Train managers to be aware of what protected disclosures are and how to deal with them

# Fairness

- Maintain confidentiality as much as possible (cannot always be absolute)
- Look independently at the issue with an open mind
- Do not be influenced by the identity of the whistleblower – look at the substance not the source



## What about...?

- Confidentiality provisions in employment contracts
- NDAs
- Settlement agreements
- Insider lists

# Risks

- Employment tribunal claims (automatic unfair dismissal, unlawful detriment) – **potentially unlimited damages**
- Employment tribunal claims against colleagues
- Interim relief
- Reputational risk
- Regulator intervention
- Fostering a toxic work environment

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Getting the right policies and  
procedures in place

# Why have a policy?

- Demonstrates commitment to taking whistleblowing seriously
- Fosters a culture of openness which will encourage workers to speak up
- Sets out guidance for managers and people who might receive disclosures
- Reduces the risk of disclosures being made externally to third parties, regulators or the media
- Reduces the risk of litigation



Getting the right policies and procedures in place

- Clear/understandable explanation of what whistleblowing is
- Framework setting out how to raise a concern
- Outlining the procedure for investigations
- Commitment to providing support for whistleblowers
- Reassurance that whistleblowers will not be subject to detriment
- Importance of confidentiality

# What should the policy include?



# What else?

- **Training and support**
  - Train managers on how to identify a qualifying disclosure and what steps to take
  - Be clear that victimisation of a whistleblower will lead to disciplinary action
- **Promotion of the policy**
  - Ensure it is easily accessible for all workers (e.g. on staff intranet)
  - Inform new joiners and regularly remind existing employees of the policy
- **Company ethos**
  - Encourage staff to speak up as part of the organisation's ethos (e.g. in the code of conduct)



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# Considerations when managing whistleblowers

# Considerations during the investigation

## **Confidentiality**

- Protect confidentiality where possible
- Remember data protection obligations

## **Other Processes**

- Treat as separate from other processes (ring-fence where possible)
- You can still discipline or dismiss someone as long as it is not on the ground of or for the reason of the protected disclosure(s)

## **Investigation Process**

- Appoint an appropriate and independent investigator
- Investigate matters promptly
- Keep records and notes
- Keep the whistleblower informed of progress where possible

# Considerations after the investigation

- Provide the whistleblower with a written outcome
- Provide the whistleblower with support if required
- Notify the relevant internal stakeholders
- Notify the relevant third parties (including regulators)
- Keep a record of the number of whistleblowing disclosures received and the nature of the disclosures

# What about...?

- When someone claims they have made a protected disclosure but it is actually a personal grievance
- When someone raises a whistleblowing concern during another process
- When someone submits their complaint anonymously
- When a complaint involves an overseas site



# Conclusion

- Remains an area that is under review
- Protect are campaigning to expand the scope of whistleblowing protection
- The FCA recently carried out a survey about culture and non-financial misconduct
- Allegations of sexual harassment to be a protected disclosure under the Employment Rights Bill



# Contact us



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# Questions

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