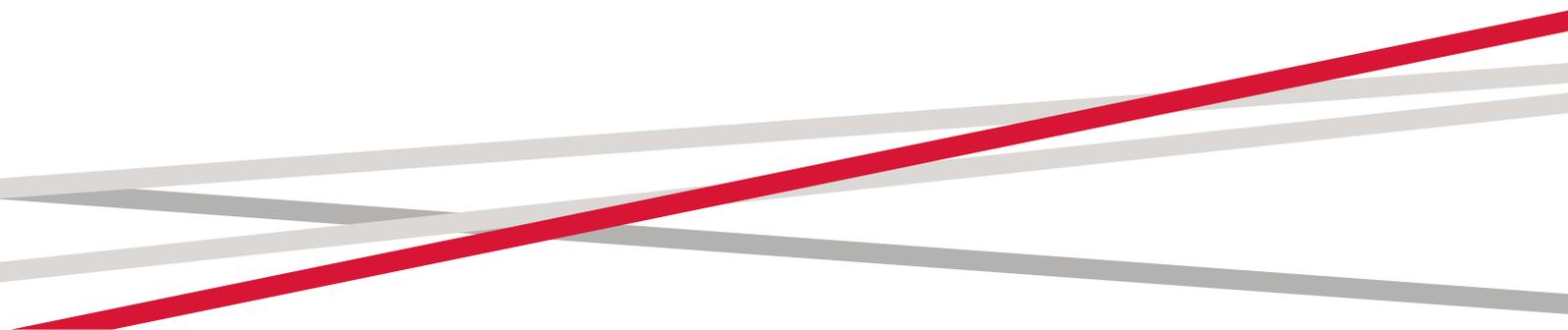


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Whistleblowers During the Covid-19 Pandemic

Numerous stories have emerged about whistleblowers being silenced and retaliated against during the Covid-19 pandemic. In this policy brief we consider some cases of retaliation against whistleblowers and cases illustrating the significance of the information they bring forward. Two facts about Covid-19 and whistleblowers become salient. First, it is hard to externally monitor behavior within care homes due to the risk of contagion (auditor-patient/patient-auditor). Second, it is hard to infer from outcomes (e.g. number of deaths) that management misbehaved, due to the high uncertainty and the many possible factors involved in the spread of Covid-19. Adequate whistleblower protections and confidential reporting channels are therefore essential to ensure transparency, compliance with safety rules, and more generally public accountability in the management of this crisis.



Whistleblowers are Silenced and Suffer Retaliation

The Covid-19 crisis has created pressure on governments, hospitals and secondary health institutions – in particular elderly care homes - to control the narrative on the spread of the virus and their response to it. As a result, we have already seen several whistleblowers being silenced and retaliated against.

The most (in)famous case is probably that of Li Wenliang, the Chinese doctor at Wuhan Central Hospital who warned his colleagues about a new SARS-like virus to on the 30th of December 2019. Four days later he was summoned to the Public Security Bureau where he was ordered to sign a letter in which he was accused of “making false comments” and “severely disturbed the social order”. Another seven persons were also arrested on suspicion of “spreading rumors”.

China is perhaps not the first country that comes to mind when considering adequate whistleblower protections, but the problem is a broad one.

In the US, several doctors and nurses have been fired and disciplined for **expressing worries** about their work conditions, also in relation to a **lack of** personal protective equipment (PPE). Nor is the issue of retaliation against whistleblowers localized to healthcare. The Vice President of Amazon’s cloud computing arm, Tim Brady, **quit his job** “in dismay at Amazon firing whistleblowers who were making noise about warehouse employees frightened of Covid-19”. **Nine US senators** also sent Amazon a request to explain its policy for firing workers after several employees who had expressed concerns over working conditions were laid off.

In Russia three doctors, two of which had protested their working conditions during the crisis **suspiciously fell out of hospital windows**, allegedly due to excessive work pressure. Two of the doctors died, and one doctor was threatened with criminal charges for spreading “fake news” about Covid-19. We do not know whether these cases were accidents, suicides, or retaliation for speaking up, but an investigation is currently ongoing.

The problem has been particularly severe in residential elderly care homes, where in many countries there have been extreme rates of contagion and deaths.

In Italy, **complaints from caring personnel** about lack of PPE and safety procedures in terms of restrictions in visits of relatives from ‘red zones’ and transfer of personnel and patients across departments, emerged already in the end of February. At the private elderly care home Trivulzio in Milan, caretakers claim that their early complaints were ignored by management, who allegedly also harassed those wearing face masks on the ground that they would scare guests. An investigation is **currently ongoing**, but if the allegations turn out to be true, numerous deaths in Lombardy could potentially be attributed to this negligence and could have been avoided.

In the UK, a country that had much more time than others to prepare for the arrival of the virus, a **recent report** by the whistleblower hotline Compassion in Care registers a dramatic increase in calls to their hotline: over 170 since the Covid-19 outbreak, while they normally receive no more than 30 cases per month. These whistleblowers at residential care homes, care agencies, and nursing homes continue to detail a widespread lack of



protective equipment, and retaliation for raising these concerns. Five lost their jobs and are **considering taking legal action**.

In some countries there is instead a noticeable absence of whistleblowers at nursing homes and the like. Germany is one example. While this can be due to the country's fast and apparently adequate response to Covid-19, the country also has an infamous history of **mistreating whistleblowers**, and the country's protections are some of the weakest in the EU, which may have deterred potential whistleblower from reporting. A well-known example related exactly to nursing homes is the case of Heinisch vs. Germany, where a nurse was fired for reporting improper working conditions in 2005, and then lost her case for reinstatement at all levels of German labor courts, even though it was recognized that her claims were correct. She had to turn to the **European Court of Human Rights** to be vindicated, **only after** six years of legal hassle, **though**.

These are just some examples of the systemic issue of silencing and retaliation that is now emerging. Watchdog organizations are warning about a widespread and extensive mistreatment of whistleblowers worldwide during this pandemic. The Government Accountability Project details several cases of maltreatment of whistleblowers, describing the situation created by the Covid-19 crisis as **"the largest attack on whistleblowers in the world"**.

Other cases of whistleblowing, absent retaliation, further illustrate the crucial value of the information they bring forward. In Sweden for example, a country that should have been particularly careful given its softer approach to contain the virus, **whistleblowers still reported a**

lack of PPE and poor safety routines in elderly care institutions. At one home, **employees detailed** how they went from caring for Covid-19 patients to caring for non-Covid patients while wearing inadequate safety protections. At that same home, it is estimated that more than 35 persons died from Covid-19: over a third of all residents.

Fighting Misinformation and Uncovering Wrongdoing

Protecting whistleblowers is also crucial to fight misinformation and fraud related to Covid-19. For example, a whistleblower **recently alleged** that the founder of JetBlue, who previously had argued against lockdowns, helped fund an **influential yet controversial study** which found that the infection rate in Santa Clara County, California, was 85 times higher than believed – which would have driven down the local fatality rate to flu levels at 0.12% - 0.2%. The whistleblower complaint also contained emails suggesting the authors of the study disregarded warnings raised by two other Stanford professors who attempted to verify the accuracy of the antibody tests used in the study.

Worries about abuse and fraud related to stimulus packages linked to Covid-19 have also been mounting. And indeed, the US Securities and Exchange Commission has seen a **35% increase** in whistleblower claims received between mid-March and mid-May compared to the previous year.

There is already strong public support for whistleblower protections with respect to important matters like healthcare and elderly care (Butler et al., 2019), and as we have argued elsewhere (Nyreröd and Spagnolo, 2020a, 2020b), whistleblowers are currently not adequately protected or incentivized in the EU: they do not



speak up to the degree desirable from a law enforcement/public interest point of view. The negative consequences of speaking up are often significant: blacklisting from the industry, harassment, and social and economic uncertainty are frequently associated with whistleblowing. This is not different with Covid-19 whistleblowers.

What Can Be Done

The state of whistleblower protection in Europe has been rather poor and uneven (Wolfe et al., 2014). In 2013, [Transparency International](#) rated a disappointing four countries in Europe as having “advanced” legal protection for whistleblowers. In recent years, several countries have enacted legislation to remedy the issue. France enacted Sapin II in 2017, which prohibits retaliation against whistleblowers; Sweden improved its protection in 2016 (Proposition 2015/16:128); and since November 2017, whistleblower protection in Italy, which was previously limited to the public sector, has been extended to the private sector.

It is only now, however, with the new [EU Directive on Whistleblowing](#) that we will see even protection levels for whistleblowers throughout the EU. Among other things the Directive would require firms with more than 50 employees to establish confidential internal whistleblower channels. The deadline for transposing the directive (implementing it into national law) is December 17, 2021.

EU member states should try to transpose the directive as soon as possible, as whistleblower protections are not only needed at nursing homes, but also at firms who may choose to put

employees at excessive risk of infection when faced with high cost of compliance with safety measures. This is important, because monitoring compliance with safety measures externally will likely be difficult and costly, while the new directive contains several articles that would improve the informational flow within organizations but also externally to supervisory agencies.

To conclude, the Covid-19 crisis has created pressure to silence whistleblowers to control reputational risks for governments and private firms. If whistleblowers are successfully silenced, we risk ending up with an incomplete picture of the spread of the virus, a lack of public accountability, unnecessary deaths, and several good faith whistleblowers being retaliated against without adequate protection. Hastening the implementation of the new Whistleblower Directive is one way to ensure some level of protection for whistleblowers throughout the EU.

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