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## Formal and informal dimensions of compliance effectiveness

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# THE LECTERN

## FORMAL AND INFORMAL DIMENSIONS OF COMPLIANCE EFFECTIVENESS



*By Melanie de Waal, Janka Stoker and Floor Rink\**



■ “Ethics is everyone’s responsibility”, so many have said. We might agree – even wholeheartedly if it were not that the conversation all too often ends there. Whereas each individual should be responsible for their own actions and behaviour, the setting of the threshold of the ethical benchmark that is applicable or sought after within an organization, is not, and cannot be, the responsibility of each individual. Therein lies chaos and conflict. In this article, three learned colleagues of the University of Groningen in the Netherlands reflect on the primary elements of establishing the framework for a commonly accepted and understood behavioural standard, and how compliance officers might be at their most effective in influencing the conduct of employees. Certain institutions improve compliance effectiveness through enhancing procedural compliance, others by stimulating a strong and enduring sense of values and purpose, yet others by attempting to combine the two. Which alternative is right for your organization?



■ Following a period with a high frequency of integrity incidents, many organizations have attempted to increase internal control measures intended to minimize reputational risk in the future. There are examples aplenty: At

Imtech (an European technical solutions provider) for example, a lack of internal controls made it possible for a major bookkeeping fraud concerning the construction of a Polish theme park to go on for years without being detected.<sup>1</sup>

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<sup>1</sup> *Former Imtech managers face possible criminal complaint for fraud*: June 2013, Financial Times.

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As a result, the organization suffered from severe reputational damage and financial losses due to a dramatic drop in share prices. Similar fraud cases have occurred at other large corporations, such as Worldcom and Enron in the 1990s, also due to internal control failures.

In the 2011 annual survey of the Ethics Resource Centre, they observed and reported on a widespread implementation of internal control functions since the early 1990s as a result of these fraud cases, such as compliance departments and associated compliance programs.<sup>2</sup> More specifically, 70 % of the surveyed organizations were found to have implemented a number of common compliance elements, such as:

- a code of conduct,
- training programs, and
- ‘hotlines’, to report observed misconduct.

This observation is in line with the conclusions of Treviño and colleagues,<sup>3</sup> who also argue that the role of internal compliance has expanded rapidly through the 20 years or more of its existence, and nowadays includes ensuring both legal and ethical standards within organizations. However, the major question that is as yet unanswered, is the extent to which compliance is effective in truly reducing unethical behaviour and increasing the ethical awareness of employees. This is an urgent issue, given the fact that integrity incidents, like the one at Imtech, still fill the newspapers with alarming regularity.

The reoccurrence of integrity incidents has placed compliance and its effectiveness in the spotlight. The aim of this article is to examine what measures compliance officers believe to be effective in reducing unethical behaviour and

2 Ethics Resource Center: 2011, ‘2011 National Business Ethics Survey: Workplace ethics in transition’, Arlington: ERC.

3 Treviño, L. K.; den Nieuwenboer, N. A.; Kreiner, G. E.; Bishop, D. G.: 2014, ‘Legitimizing the legitimate: A grounded theory study of legitimacy work among ethics and compliance officers’, *Organizational behaviour and human decision processes*, 123(2).

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increasing ethical awareness within an organization.

We collected data from 80 compliance officers, from different organizations across the Netherlands and mainly from the financial sector, to investigate the impact of differing dimensions of Compliance efforts to reduce unethical behaviour and increase ethical awareness. In the first part of this article, we will describe the two main dimensions of compliance effectiveness in an organizational context.<sup>4</sup> In the second part of the article, we will discuss what power instruments, or levers of influence, compliance officers can use to increase their influence on these outcomes. Based on these insights, we will end in the third part with a number of concrete actions that compliance officers and organizations can take to improve compliance effectiveness.

### Part 1: The impact of formal compliance programs and informal ethical values

A distinction can be made between formal and informal dimensions of compliance effectiveness based on the work of Tenbrunsel and colleagues.<sup>5</sup> Our research focuses on the effects of these two main dimensions of compliance effectiveness in an organizational context:

- The presence of *formal* compliance program consisting of procedures and rules (e.g., codes of ethics) to guide work behaviour and
- The promotion of *informal* shared ethical values within an organization, such as integrity, transparency, responsibility.<sup>6</sup>

4 Trevino, L. K.; Gibson, D. G.; Weaver, G. R.; Toffler, B. L.: 1999, 'Managing ethics and legal compliance: What works and what hurts', *California Management Review*, 41(2).

5 Tenbrunsel, A. E.; Smith-Crowe, K.; Umphress, E. E.: 2003, 'Building houses on rocks: The role of the ethical infrastructure in organizations', *Social Justice Research*, 16(3).

6 Kish-Gephart, J. J.; Harrison, D. A.; Treviño, L. K.: 2010, 'Bad apples, bad cases, and bad barrels: meta-analytic evidence about sources of unethical decisions at work', *Journal of Applied Psychology*, 95(1).

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The formal dimension, such as the presence of codes of conduct and activities to enforce these codes formalized in a so-called compliance program, are documented and visible from outside the organization, whereas the informal dimension, such as shared organizational norms about ethics that guide employees on how to deal with integrity issues, are less visible for an outsider. Research shows that both elements relate to compliance effectiveness, meaning that they reduce unethical behaviour<sup>7</sup> and increase awareness.<sup>8</sup> So, the presence of a formal multi-faceted compliance program, that includes formal communication and training about compliance rules and policies combined with monitoring and detecting activities, increases

compliance effectiveness. Similar results can be achieved with the presence of shared ethical values – as was discussed in the 2014 April issue of this Journal – which communicate the informal guidelines of what is acceptable ethical behaviour.<sup>9</sup>

Remarkably though, little is known about the possible combined effect of these formal and informal dimensions of compliance effectiveness. It can be argued that when a formal compliance program and informal shared values are combined, this will lead to the strongest reduction of unethical behaviour, since this combination will make formal compliance programs more integrated in daily work activities and better linked to the responsibilities of employees.<sup>10</sup>

7 Kaptein, M.: 2014, 'The effectiveness of ethics programs: The role of scope, composition, and sequence', *Journal of Business Ethics*.

8 Rottig, D.; Koufteros, X.; Umphress, E.: 2011, 'Formal infrastructure and ethical decision making: An empirical investigation and implications for supply management', *Decision Sciences*, 42(1).

9 Ethics Ambassadors: Getting under the skin of the business by R. Steinholtz, *Journal of Business Compliance*, 03/04 2014.

Weaver, G. R.; Trevino, L. K.: 1999, 'Compliance and Values Oriented Ethics Programs', *Business Ethics Quarterly*, 9(2).

10 Weaver, G. R.; Trevino, L. K.; Cochran, P. L.: 1999, 'Integrated and decoupled corporate social performance: Management commitments, external pressures, and corporate ethics practices', *Academy of Management Journal*, 42(5).

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*Strict guidelines and controls associated with “effective” compliance programmes diminish any sense of autonomy, responsibility and therefore concern for promoting informal values*

In a similar vein, some scholars argue that a formal compliance program will not lead to significant changes if it is not connected to more informal work processes.<sup>11</sup> These scholars argue that such decoupling fuels the perception that the compliance program is mere window-dressing and not grounded on informal shared ethical values underlying these formal guidelines, in turn leading to rigorous box ticking mentalities or a “sleep-walking” culture.

However, research also suggests that this combination does not automatically lead to greater compliance effectiveness, since, research shows that a mismatch between the focus of the formal compliance programs and the message communicated by more informal ethical values can have detrimental effects for compliance effectiveness as well.<sup>12</sup> Strict guidelines and controls associated with “effective” compliance programmes diminish any sense of

autonomy, responsibility and therefore concern for promoting informal values. Therefore, one could also argue that their combination is not necessarily more effective than the effect of one of these elements alone. And that is indeed what our study shows. We find that compliance officers themselves believe that *either* the presence of a formal compliance program *or* the presence of informal ethical values are shared within an organization will already lead to reductions in unethical behaviour and more awareness among employees.

Thus, compliance officers in the field indicate that formal compliance programs and informal shared values are separately capable of providing effective guidance to employees’ daily work decisions, and that their combination is not a necessary pre-condition for them to successfully influence employees’ ethical behaviour and awareness. Future research is required to inform us under which circumstances

11 MacLean, T. L.; Behnam, M.: 2010, ‘The dangers of decoupling: The relationship between compliance programs, legitimacy perceptions, and institutionalized misconduct’, *Academy of Management Journal*, 53(6).

12 Smith-Crowe, K.; Tenbrunsel, A. E.; Chan-Serafin, S.; Brief, A. P.; Umphress, E. E.; Joseph, J.: 2014. ‘The Ethics “Fix”: When Formal Systems Make a Difference’, *Journal of Business Ethics*, forthcoming.

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*The presence of shared ethical values in an organization provides them with personal power to successfully reduce unethical behaviour and increase awareness*

the choice for a formal over an informal approach, or the reverse, would be most effective. Since, the “best choice” of approach may be effected by several context factors, for instance the type of sector or organisational characteristics which shape the nature of the work performed and the complexity of the situation confronting decision-takers. As could be expected, we also found that compliance officers indicated that the absence of *both* elements would indeed negatively impact their effectiveness.

### **Part 2: What kind of power can compliance officers use to increase their effectiveness?**

So, why did compliance officers believe that they were capable of increasing compliance effectiveness? It turns out that ‘power’ is a key word here. We

investigated two well-known individual power bases – stemming from the seminal work of French and Raven<sup>13</sup> that are applicable to the working context of compliance officers.

First, there is the option of so-called position power. This type of power stems from a formal division of roles, as is the case in an organizational hierarchy.<sup>14</sup> Such power is derived from authoritative functions or positions which are associated with the control and distribution of certain resources and punishments. Literature suggests that possessing position power should help a person to reduce others’ unethical behaviour and to increase ethical awareness among them, because of people’s basic reaction to avoid punishments, which makes them refrain from behaviour that will be sanctioned.<sup>15</sup> One may indeed expect that compliance officers’ formal responsibility to enforce

13 French, J. Jr.; Raven, B.: 1959, ‘The basis of social power’. In D. Cartwright (Ed.), *Studies in social power: 150-167*. Ann Arbor: University of Michigan, Institute for Social Research.

14 Kelman, H. C.: 1974, ‘Further thoughts on the processes of compliance, identification, and internalization’, *Perspectives on social power*.

15 Thomas, C. W.; Bishop, D. M.: 1984, ‘Effect of Formal and Informal Sanctions on Delinquency: A Longitudinal Comparison of Labeling and Deterrence Theories’, *The Journal of Criminal Law & Criminology*, 75.

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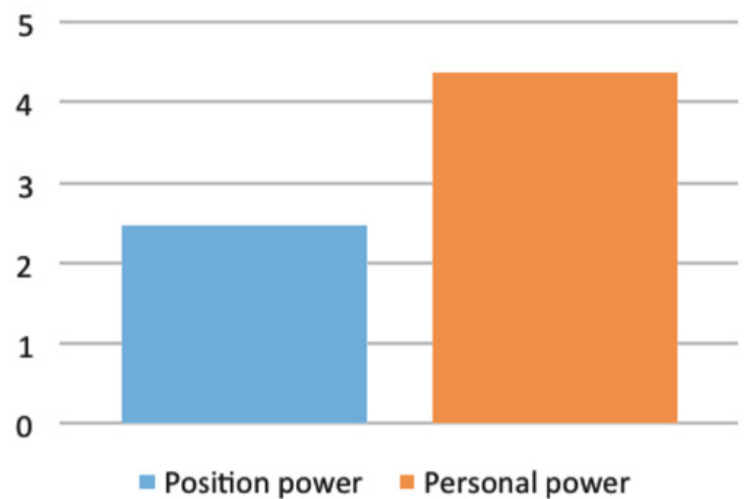


Figure 1: **distribution of compliance power bases**

a code of conduct upon employees – used in conjunction with monitoring and detecting tools – will provide them with the position power to sanction unethical behaviour and reward ethical behaviour. Interestingly however, we find no evidence of such an effect. The results of our study show that the mere presence of formal compliance programs will already make compliance effective, regardless of whether or not compliance officers feel that this gives them position power.

Yet there is also the so-called personal power base, which is derived from an individuals' personal characteristics<sup>16</sup> and is unrelated to his or her position. These personal characteristics enable someone to relate to shared values with others which is helpful for building strong personal relationships. Research suggests that when compliance officers are seen to share and act on the same values as other employees, it also gives

these officers more personal power over the ethical behaviour of colleagues.<sup>17</sup> It is likely that compliance officers hold high levels of personal power, because they are generally seen as safeguards of an organizations' integrity, and thus credibly embody this ethical value. Indeed, compliance officers can refer to the importance of integrity values and, as such, build stronger relationships with employees.

The results of our study confirms the above notion, showing that compliance officers perceive the possession of personal power to be useful in increasing compliance effectiveness. The officers also clearly recognize that the presence of shared ethical values in an organization provides them with personal power to successfully reduce unethical behaviour and increase awareness.

The results of our study reveal that compliance officers do not believe that

16 Ellemers, N.; Van Rijswijk, W.; Bruins, J.; De Gilder, D; 1998, 'Group commitment as a moderator of attributional and behavioural responses to power use, *European Journal of Social Psychology*, 28(4).

17 Subašić, E.; Reynolds, K. J.; Turner, J. C.; Veenstra, K. E.; Haslam, S.

A: 2011, 'Leadership, power and the use of surveillance: Implications of shared social identity for leaders' capacity to influence', *The Leadership Quarterly*, 22(1).



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they hold a great degree of position power within their organization, even when there is a well operating formal compliance program. Yet they do believe that they hold personal power over employees (see above diagram). We can therefore conclude that compliance officers should not try to improve their effectiveness by increasing their position power; rather they should focus on increasing their personal power over employees. At the end of the next paragraph, we offer specific suggestions on how this can be established.

### **Part 3: Practical guidelines for compliance officers to improve compliance effectiveness**

#### **■ Fostering compliance programs and shared values**

Grounded upon the two dimensions of compliance effectiveness – formal compliance programs and informal shared values – we propose a matrix for compliance effectiveness to plot the four possible situations in which organizations can find themselves (see Figure 2). We

argue that the compliance officer is the person who can best determine the organization's position on the graph, preferably jointly with top-management. Together they can then decide on the actions that are needed to improve the organization's position on both dimensions.

In order to define the current position of the organization, compliance officers and top-management need to examine whether the formal and informal dimensions of compliance effectiveness are present within their organization. Defining the organization's position on the formal dimension is relatively easy, as it is fulfilled when there is a compliance department and a formal compliance program including extensive guidelines, procedures and controls. But it is more difficult to define the organization's position on the informal dimension. In general, compliance officers should assess whether ethical values, such as integrity, transparency, and responsibility are shared and internalized throughout the organization. This can be done by measuring both the opinion of employees and managers on

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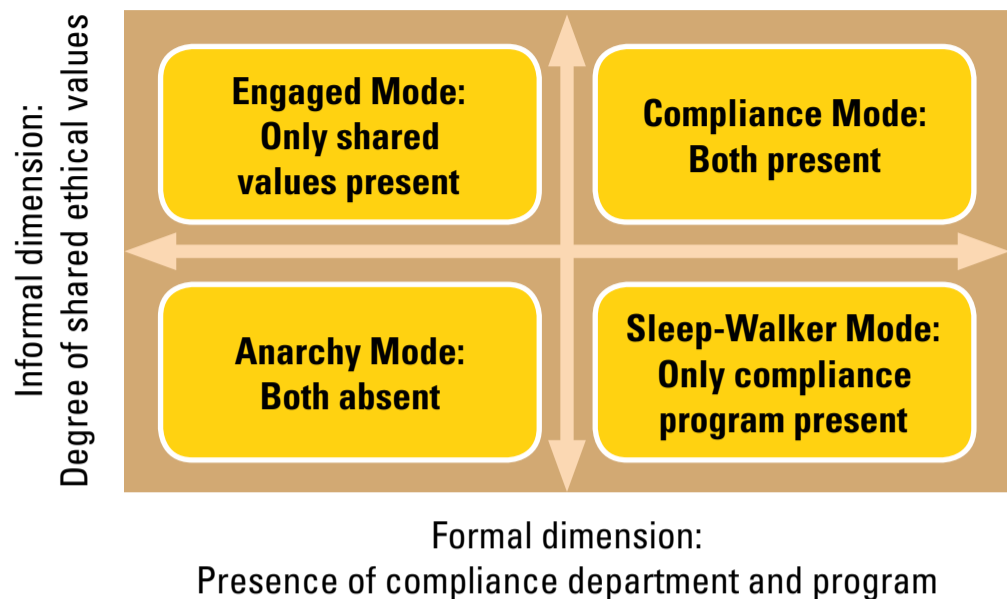


Figure 2: **Matrix of formal and informal dimensions of compliance effectiveness**

these values, by asking for recognition, importance, and actual visibility in behaviour (of management). This measurement can take different forms, e.g. by a yearly compliance survey on an anonymous basis.

Based on the current position of the organization in the matrix displayed in Figure 2, there are two paths through which organizations can improve compliance effectiveness. Namely the formal path, by focusing on improving the compliance program, and the informal path, by increasing the importance and shared sense of integrity, transparency, responsibility as key values of the organization. Clearly, especially if an organization is in ‘Anarchy Mode’, either path, or a combination can be taken, although we do advise a specific option in that situation (see below). But also within any one of the three other positions, improvements can be made.

### THE FORMAL PATH: STRENGTHENING THE FORMAL COMPLIANCE PROGRAM

The presence of a formal compliance program is a good start, so if an organization does not have such a program this is the easiest first step to take. Especially in the ‘Anarchy Mode’, when both formal and informal dimensions of compliance effectiveness are absent, it is wise to start with organizing a compliance department and implement a multi-faceted formal compliance program, since it is a lot more difficult to change a culture where ethical values are not shared or where unethical behaviour is the norm.<sup>18</sup>

Importantly however, even organizations in the ‘Sleep-Walker Mode’ who already have a compliance department and a formal compliance program, have possibilities for strengthening the current situation. The results of our study clearly show that formal compliance

18 Sims, R. R.: 2000, ‘Changing an organization’s culture under new leadership’, *Journal of Business Ethics*, 25(1).

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programs are most effective when they are comprehensive and include *all* of the following compliance activities:

- Translating regulations into compliance policy,
- Formulating preventive compliance policy,
- Compliance training,
- Providing compliance advice, and
- Monitoring activities.

Indeed, the combination of both policy development on the one hand, and specific visible activities like training and advice on the other, represent actions that require both ‘thinking’ and ‘doing’. Given the fact, that according to Kaptein,<sup>19</sup> less than 50% of organizations are currently performing any monitoring of unethical

conduct, we believe that adopting this activity as part of a formal compliance program has a lot of potential for many organizations.

### THE INFORMAL PATH: STIMULATE SHARED ETHICAL VALUES

The results of our study also advocate the importance of shared ethical values that are part of a strong ethical culture. We argue that both an organization’s top management and compliance officers have a prominent role in attaining such a culture. Foremost, it is the role of top management to pay explicit attention to ethical values, because it stimulates the shared adherence to these ethical values in the organization.<sup>20</sup> Furthermore, visible management commitment to ethics creates an organizational climate in which reporting observed misconduct, i.e. whistleblowing, is encouraged and supported.<sup>21</sup>

19 Kaptein, M.: 2014, ‘The effectiveness of ethics programs: The role of scope, composition, and sequence’, *Journal of Business Ethics*.

20 Weaver, G. R.; Trevino, L. K.; Cochran, P. L.: 1999, ‘Corporate ethics programs as control systems: Influences of executive commitment and environmental factors’, *Academy of Management Journal*.

21 Mayer, D. M.; Nurmohamed, S.; Treviño, L. K.; Shapiro, D. L.; Schminke, M.: 2013, ‘Encouraging employees to report unethical conduct internally: It takes a village’, *Organizational Behaviour and Human Decision Processes*, 121(1).

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*It is beneficial for compliance effectiveness when compliance officers believe they hold personal power, rather than position power*

How can managers make these intangible and elusive commitments visible? First, top managers can show their support through formal communication about the importance and meaning of these ethical values, e.g. in an annual report. Second, they can show and share exemplary behaviour themselves when it concerns ethics. For instance, members of the board can use blogs on the intranet and other social media to narrate how they deal with integrity dilemmas and how this has benefitted the organization.<sup>22</sup> Finally, another way in which top management can emphasize the importance of ethical values is by explaining openly which ethical aspects have played a role in their decision making and how this fits in the aspired ethical culture and how integrity will make the organization achieve its goals.<sup>23</sup>

Compliance officers themselves can help stimulate shared ethical values

by communicating the importance of such values and bring specific topics like integrity, responsibility and transparency to the attention of employees, for instance in training sessions, newsletters and compliance reports. Moreover, compliance officers can also help employees understand what integrity as a value means to their daily work and provide guidance and advice on how employees should act when confronted with an ethical dilemma<sup>24</sup>. In this way compliance officers can contribute to the shared understanding in the organization of what ethical behaviour entails and also encourage employees to act with this value in mind when making decisions<sup>25</sup>.

### ■ Increasing personal power

One of the main outcomes of our study is that it is beneficial for compliance effectiveness when compliance officers believe they hold personal power, rather

22 Ed. Such transparency requires consideration of potential regulatory or litigation issues.

23 Sims, R. R.: 1991, 'The institutionalization of organizational ethics', *Journal of Business Ethics*, 10(7).

24 Trevino, L. K.; Gibson, D. G.; Weaver, G. R.; Toffler, B. L.: 1999, 'Managing ethics and legal compliance: What works and what hurts', *California Management Review*, 41(2).

25 Cassell, C.; Johnson, P.; Smith, K.: 1997, 'Opening the black box: Corporate codes of ethics in their organizational context'. *Journal of Business ethics*, 16(10).

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than position power. Compliance officers have several options to ensure and enlarge their personal power, through creating trust with both management *and* employees<sup>26</sup>. First, forming trusting connections with (top) management increases compliance officers' personal power, because these connections are the basis for personal relationships. Compliance officers can create trust by ensuring the confidentiality of their discussions with management about ethical issues.

But especially towards employees, compliance officers have a world to win when it concerns their personal power. In their direct contacts with employees, compliance officers can define a so-called 'safety zone' and create trust by taking employees' ethical concerns seriously, and treating them with respect and without repercussion for those who

report misconduct. More specifically, compliance officers can arrange protection for whistleblowers, which is also a success factor in transforming ethical cultures.<sup>27</sup>

It is also important that compliance officers show their personal identification, and connection with the shared ethical values in their own behaviour, so that they become the reference and role model that employees will consider for their future ethical decisions<sup>28</sup>. Being the go-to person for employees who are confronted with an ethical situation will provide compliance officers with a more informal channel to effectively reduce unethical behaviour and increase awareness.

### Conclusion

In this article we have shown that both formal compliance programs and

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26 Treviño, L. K.; den Nieuwenboer, N. A.; Kreiner, G. E.; Bishop, D. G.: 2014, 'Legitimizing the legitimate: A grounded theory study of legitimacy work among ethics and compliance officers', *Organizational behavior and human decision processes*, 123(2).

27 Benson, J. A.; Ross, D. L.: 1998, 'Sundstrand: A case study in transformation of cultural ethics', *Journal of Business Ethics*, 17 (14).

28 Cassell, C.; Johnson, P.; Smith, K.: 1997, 'Opening the black box: Corporate codes of ethics in their organizational context'. *Journal of Business ethics*, 16(10).

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informal shared ethical values successfully contribute to compliance effectiveness, in terms of reduced unethical behaviour and more awareness. This is good news for those organizations that have already invested heavily in implementing formal compliance programs. For organizations that still lack a formal compliance program, and where values of integrity are not yet deeply ingrained in the companies' DNA, we propose that the best option is to first pursue the formal 'route' of implementing a compliance program. For compliance officers who wish to take a step beyond the known path of formal compliance programs, more is to be gained in improving the informal shared sense of integrity, transparency and responsibility as important organization values. Although more difficult and more long-term focused, a strong benefit of following this 'informal' route is that it enables compliance officers to improve their influence through personal power on compliance effectiveness for the long haul. ■

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The picture above depicts "Consulting the Oracle" by John William Waterhouse.