



Preconference 3: Investigations: Interconnectivity of Auditing, Monitoring and Investigations

6th November 2019

PAUL
HASTINGS

NAVIGANT
A Guidehouse Company

Agenda

- 1** **Introductions**
- 2** **Benchmarking: Misconduct/Whistleblower Handling**
- 3** **Moderated Panel: Investigations Organizations**
- 4** **Moderated Panel: Outcomes of Investigations**

Panel Members

- Keith Burn (Ipsen)
- Gary Giampetruzzi, Esq. (Paul Hastings)
- Betania Glorio, LLM (Merch KGaA)
- Casey Horton (Navigant, A Guidehouse Company) – Moderator
- Franziska (Franzi) Janorschke (Novartis)



Internal Misconduct/Whistleblower Handling & Investigations Benchmark

12th April 2019

PAUL
HASTINGS

NAVIGANT
A Guidehouse Company

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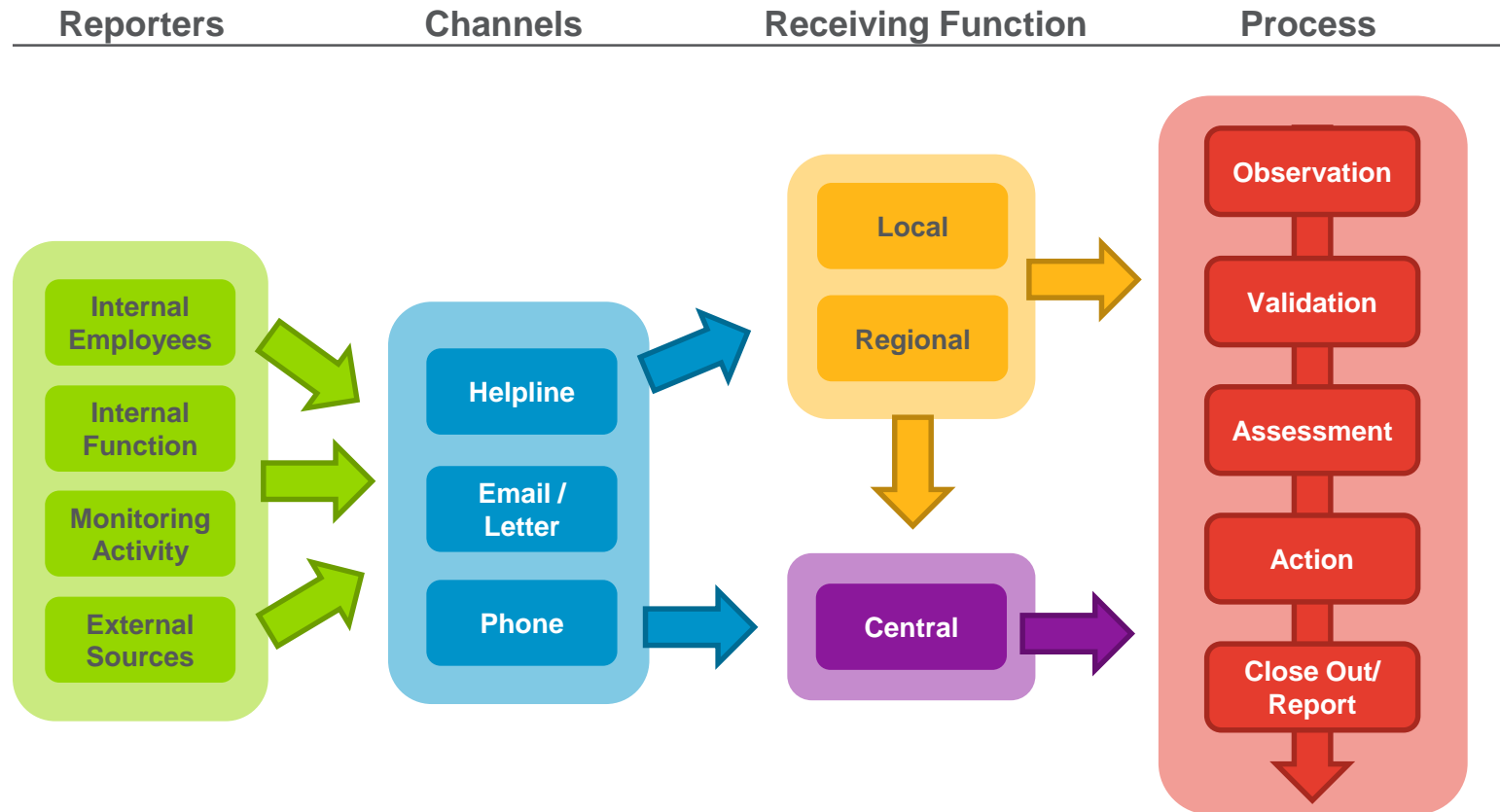
Methodology

Benchmark Report Methodology

- An online survey was completed by 11 respondents from different companies
 - NOTE: Some respondents did not answer every question
- The data from the survey was collected and analysed
- The analysed data was blinded and aggregated into a PowerPoint report
- Company-specific terminology used in the survey has been replaced by generic industry terminology in the report to maintain the anonymity of the results

Benchmark Analysis: Overview

What is the Process?



Benchmark Analysis: Overview

What is the Process?

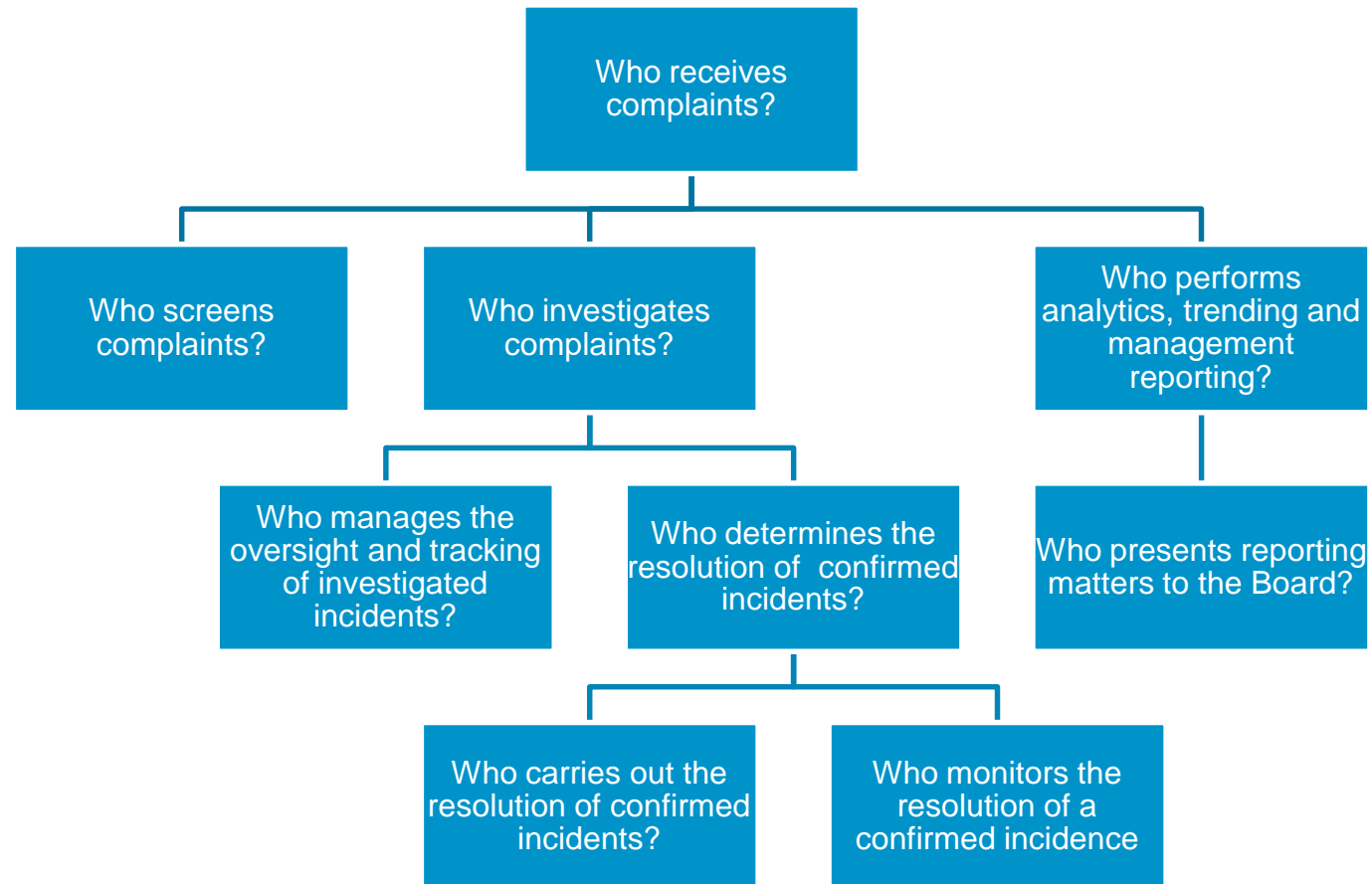


What are the Key Complaints?



Benchmark Analysis: Overview

Who is Involved?

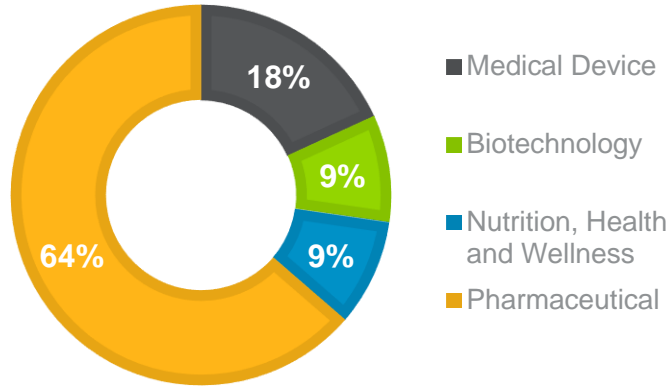




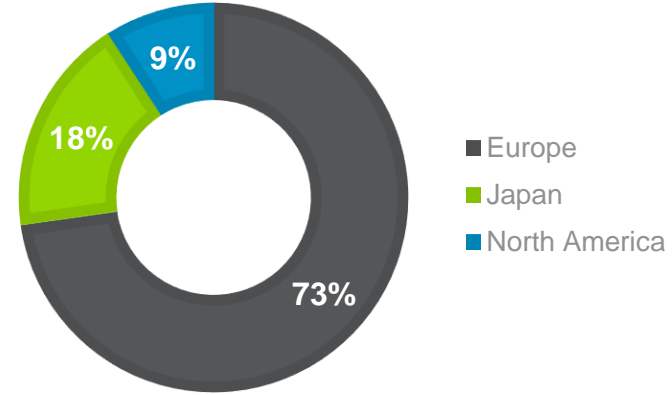
Manufacturer Profile

Manufacturer Profile

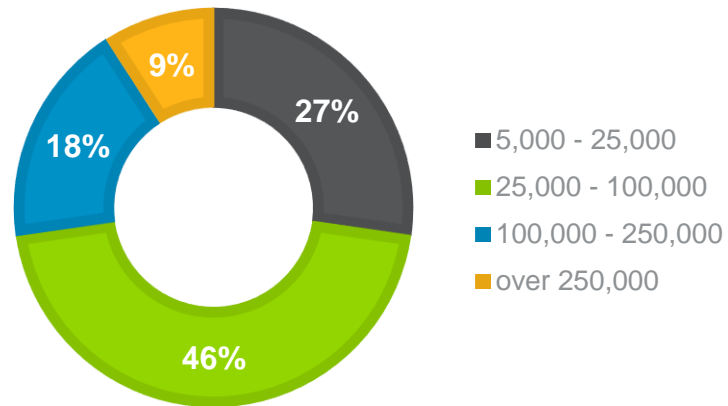
Type of Company



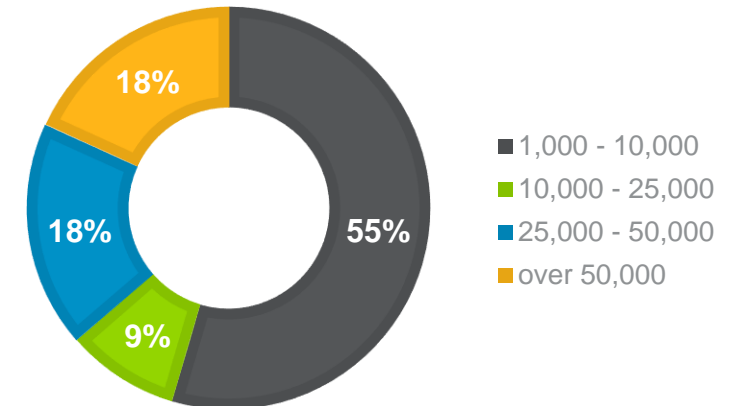
Location of Global Headquarters



Number of Employees Worldwide



Size of Sales Force





Complaint Process and Governance

Governance and Report Screening

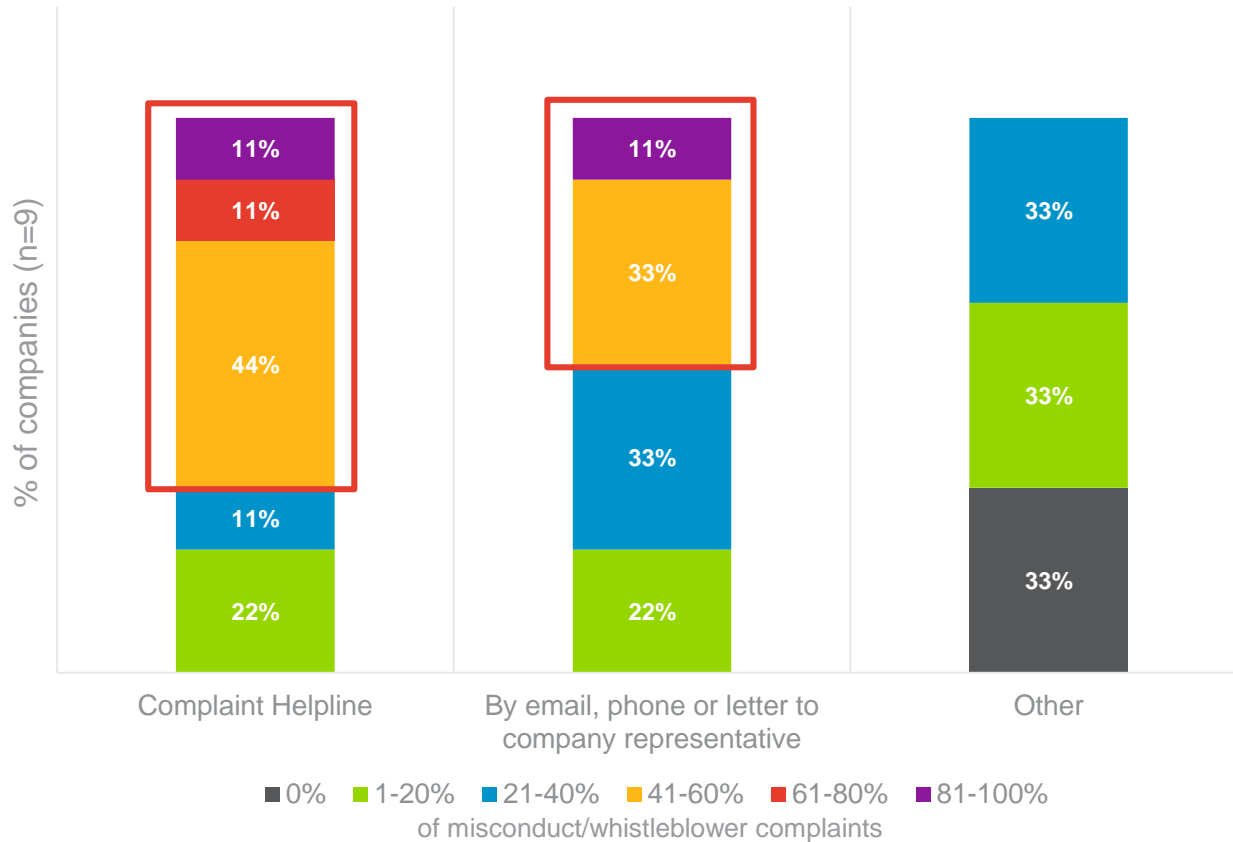
- For the majority of companies, the Ethics/Compliance Department is responsible for receiving and screening misconduct/whistleblower complaints
- 70% of companies surveyed have pre-determined rules/criteria for screening reports, which include:
 - *“Violations of law, regulation, company policy, accounting/financial reporting ad serious wrongdoing within the company”* - Anonymous Survey Respondent
 - *“Assessment of misconduct element (based on Code of Conduct, other internal policies or local law)”* – Anonymous Survey Respondent
 - *“Managerial level involved, potential damage, category of allegation”* – Anonymous Survey Respondent

Questions

- Which Department receives misconduct/whistleblower complaints?
- Which Department screens misconduct/whistleblower complaints?
- Are there pre-determined rules/criteria for screening reports?

Complaints Intake Channel

What % of misconduct/whistleblower complaints are received through the following channels?



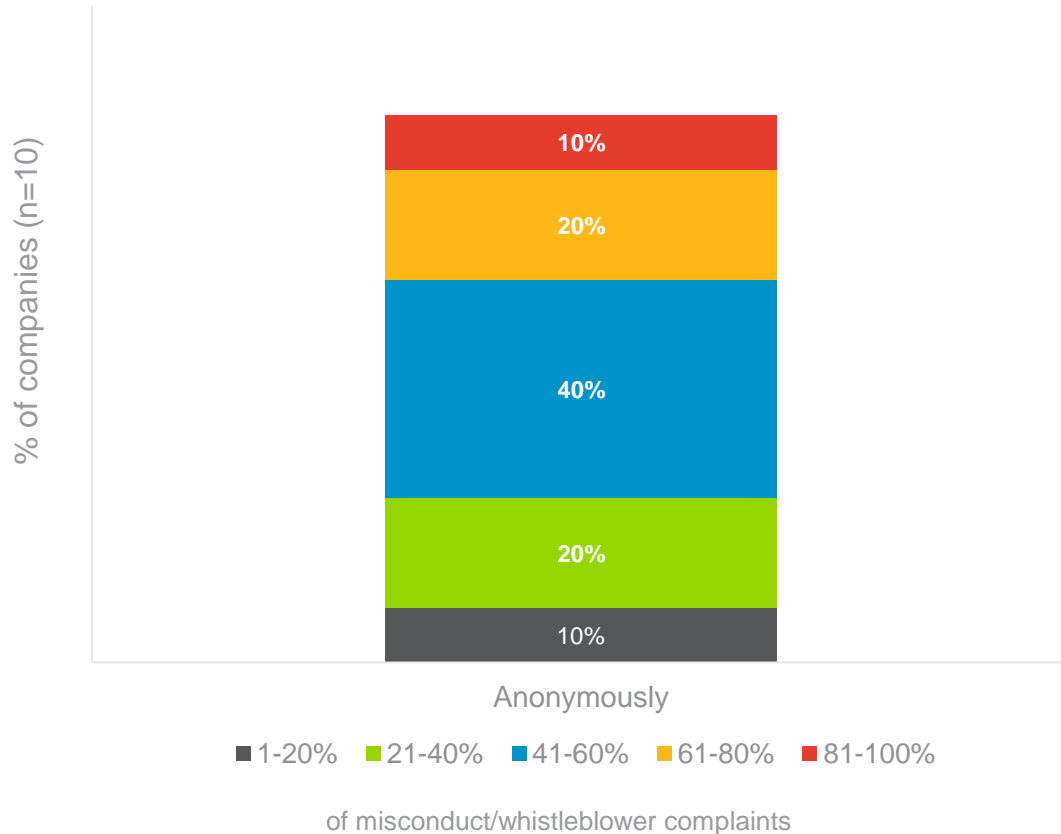
- Misconduct/whistleblower complaints are primarily received via the complaints helpline for most of the companies surveyed
 - 55% of companies receive greater than or equal to 50% of their misconduct/whistleblower complaints via this channel
- Companies also receive a significant percentage of misconduct/whistleblower complaints by email, phone or letter to company representatives
 - 33% of companies receive greater than or equal to 50% of their misconduct/whistleblower complaints via this channel
 - Companies do not have specific company representatives receiving the complaints
- 66% of companies also receive misconduct/whistleblower complaints from other channels including:
 - Direct verbally to the local compliance officer
 - Internal audit channels
 - Exit interviews

Question

- What % of misconduct/whistleblower complaints are received through the following channels? Channel: complaint helpline; Channel: By email, phone or letter to company representative; Channel: other

Source of Complaints – Anonymous vs. Identified Persons

What % of complaints/reports are received anonymously vs. by identified person?



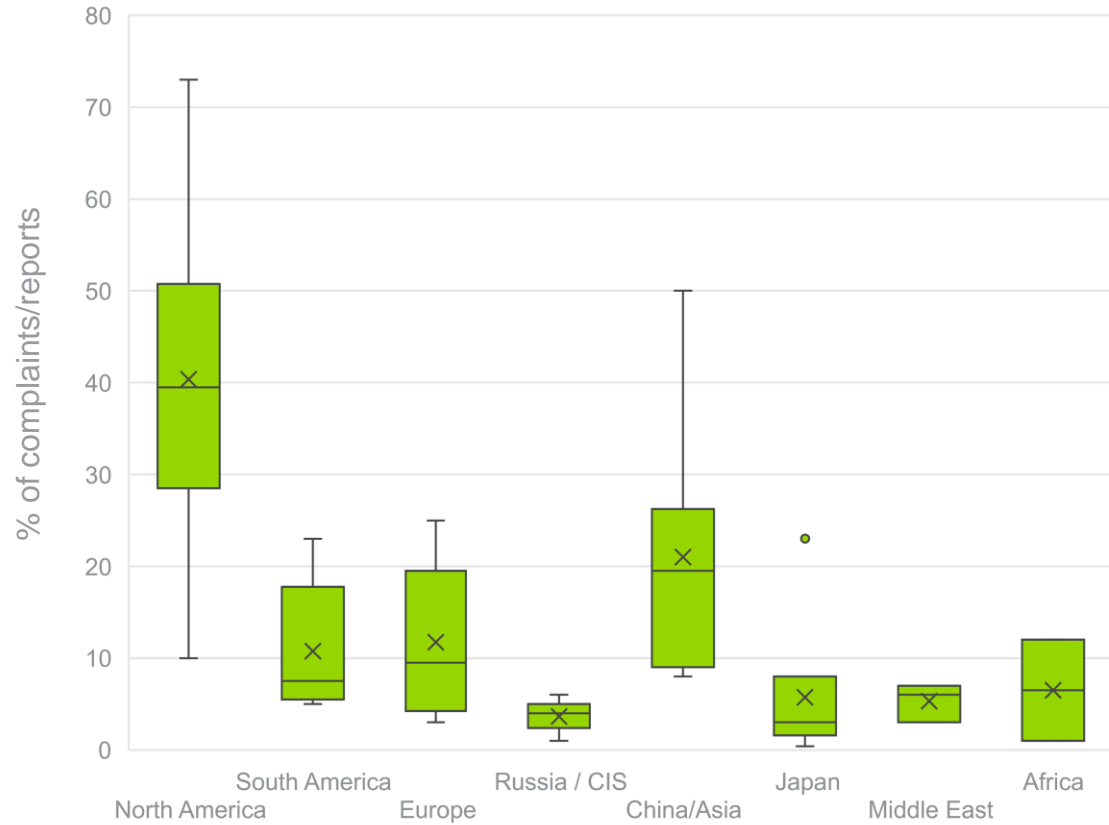
- 30% of companies had a 50:50 split on complaints/reports received anonymously vs. by identified persons
- 40% of companies received more than half of their complaints/reports anonymously
 - One company received 90% of their complaints/reports via anonymous sources
- 30% of companies received more than half of their complaints/reports by identified persons
 - For these companies, they received more that 70% of their complaints/reports via this way

Question

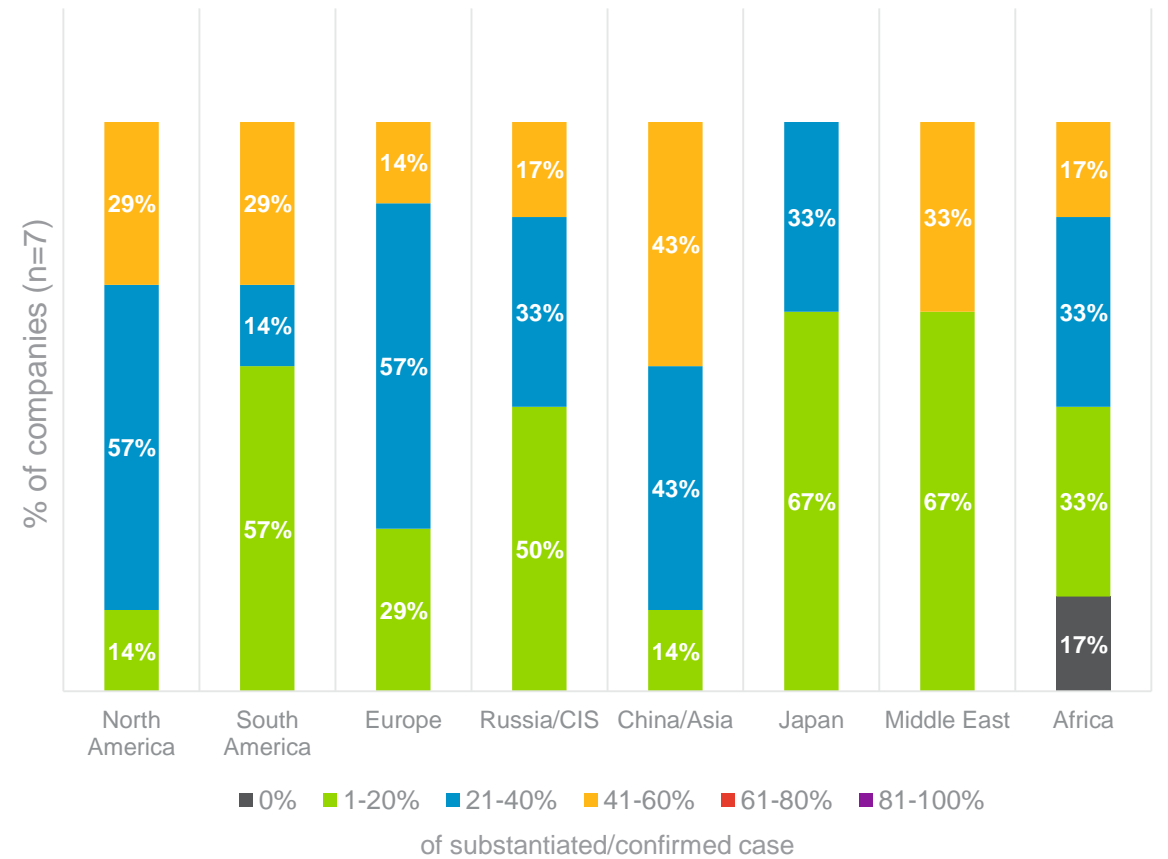
- What % of complaints/reports are received anonymously vs. by identified person?

Source of Complaints - Regions

What % of complaints/reports are from which region of the world?



What is the % of substantiated/confirmed cases per region?



Question

- What % of complaints/reports are from which region of the world and what is the level of substantiated/confirmed cases?

Oversight of Investigations

- In all companies, the Ethics/Compliance department is responsible for managing the oversight and tracking the progression of incidents under investigation
- 90% of companies have global oversight for incidents that are investigated and closed regionally/locally
 - In these companies, incidents are aggregated and then reported to management primarily through case management systems, (e.g. EthicsPoint)
 - *“Documented in EthicsPoint - reviewed by Global Investigations Director and/or Corporate Legal as appropriate. Metrics reported out by Region, Business and sub-business, Issue Type and Country.”* - Anonymous Survey Respondent
 - *“Through a global database; reports are always released after having been reviewed from global. Global defined the management level receiving the report.”* - Anonymous Survey Respondent
 - *“Through the EthicsPoint case management system where analytics and metrics can be extrapolated”* - Anonymous Survey Respondent

Questions

- Which Department manages the oversight and tracking of investigated incidents?
- Is there global oversight for incidents that are investigated and closed regionally / locally?
- If yes, how are these incidents aggregated and then reported to management?

Analytics, Trend and Management Reporting

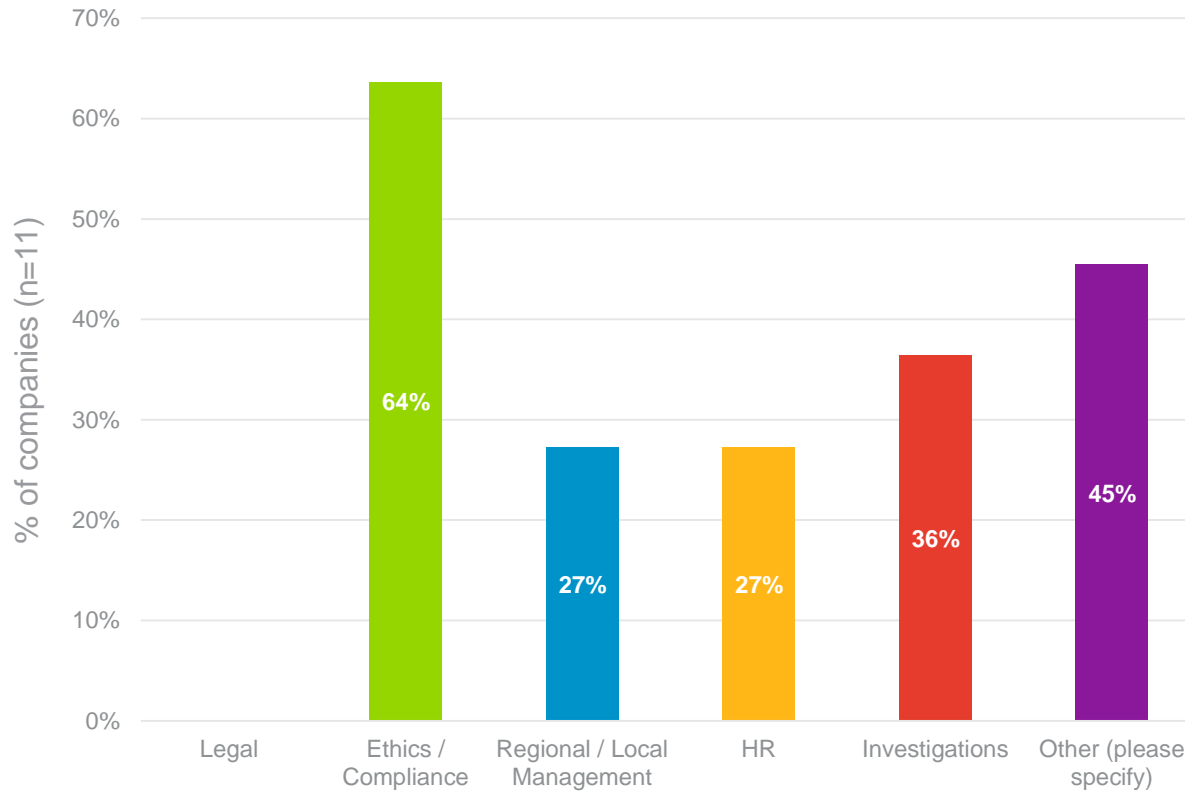
- In all companies the Ethics/Compliance department owns the responsibility of performing analytics, trending and management reporting about misconduct/whistleblower reporting information and investigations

Question

- *Which Department performs analytics, trending and management reporting about misconduct/whistleblower complaints?*

Internal Investigations – Routine Incidents

Which Department(s) carry out the investigation of a confirmed routine incident?



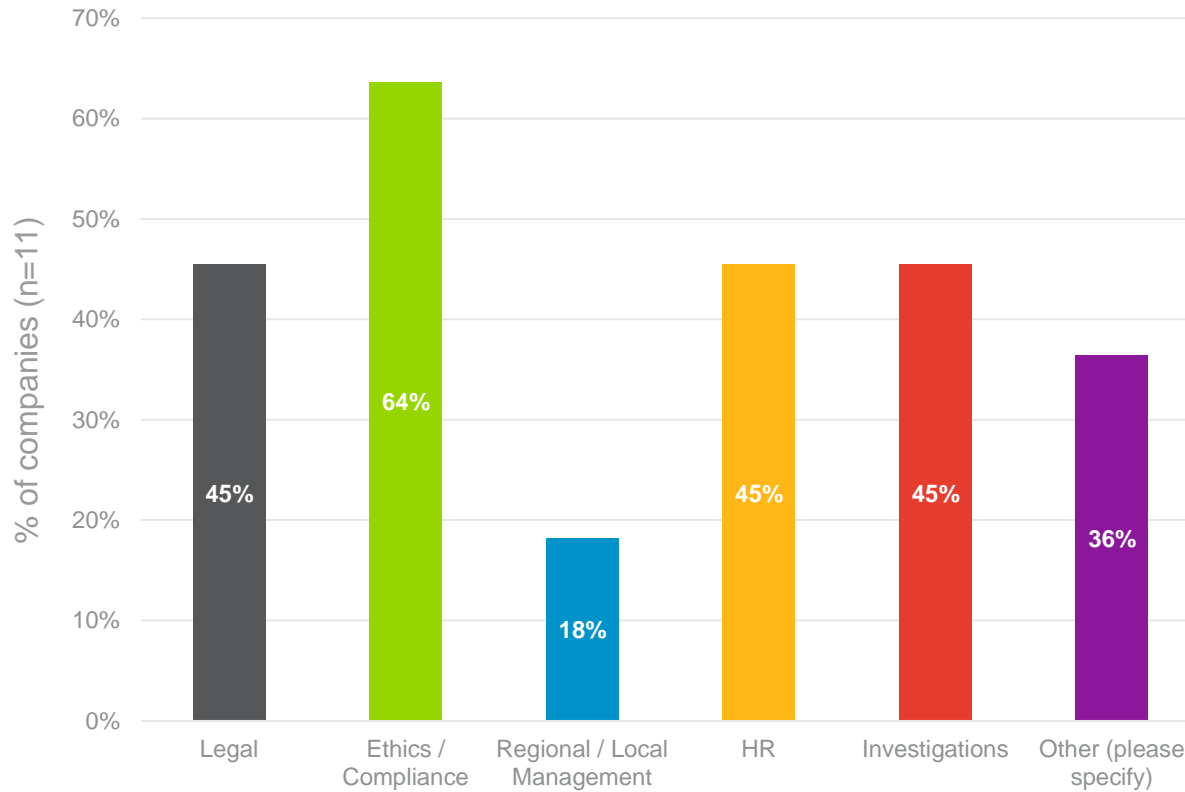
- For around 65% of companies, this activity involves multiple departments
- Responses for ‘Other’ included
 - ‘Depending on the subject, sometimes cross functional efforts.’
 - ‘Depends on nature but E&C and the business’
 - ‘Triaged by Issue Type’

Question

- Which Department(s) carry out the investigation of a confirmed routine incident?

Internal Investigations – Non-Routine/Serious Incidents

Which Department(s) carry out the investigation of a confirmed non-routine/serious incident?



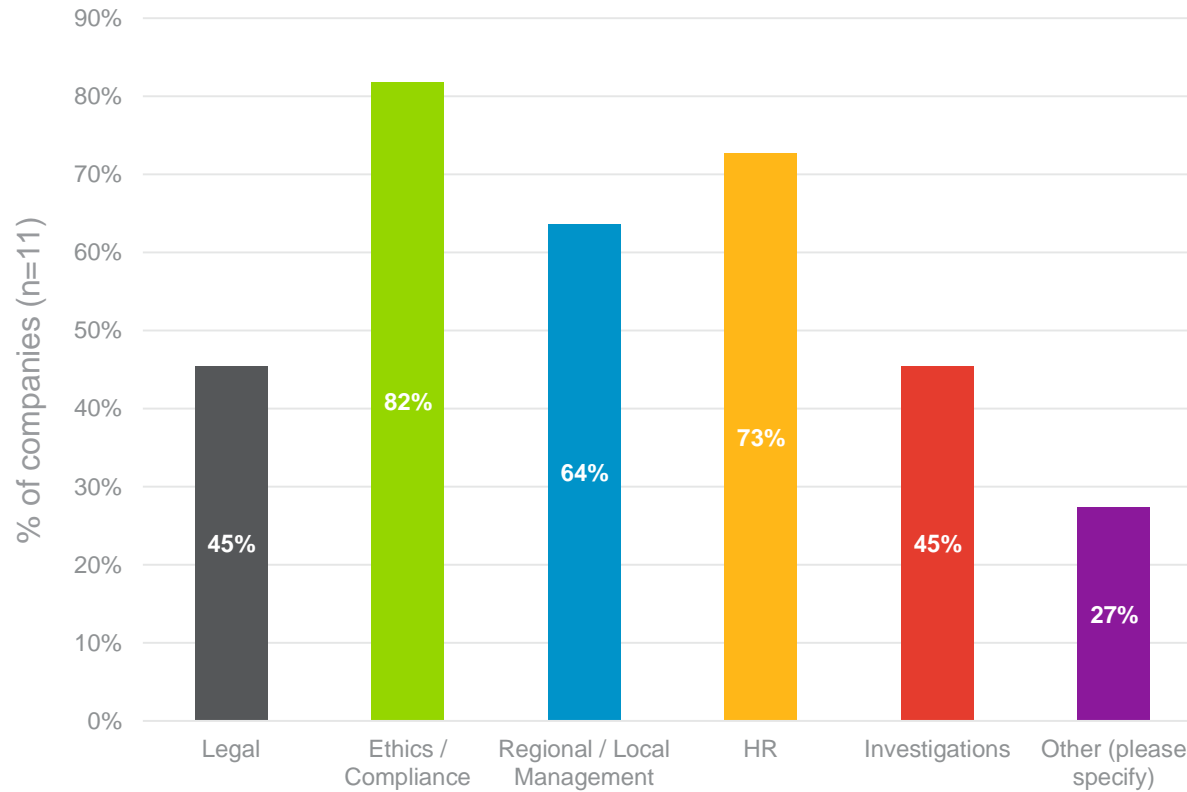
- For around 65% of companies, this activity involves multiple departments
- Responses for 'Other' included
 - *'Depending on the subject, sometimes cross functional efforts.'*

Question

- Which Department(s) carry out the investigation of a confirmed non-routine/serious incident?

Incident Resolution

Which Department(s) determine the resolution of a confirmed incident?



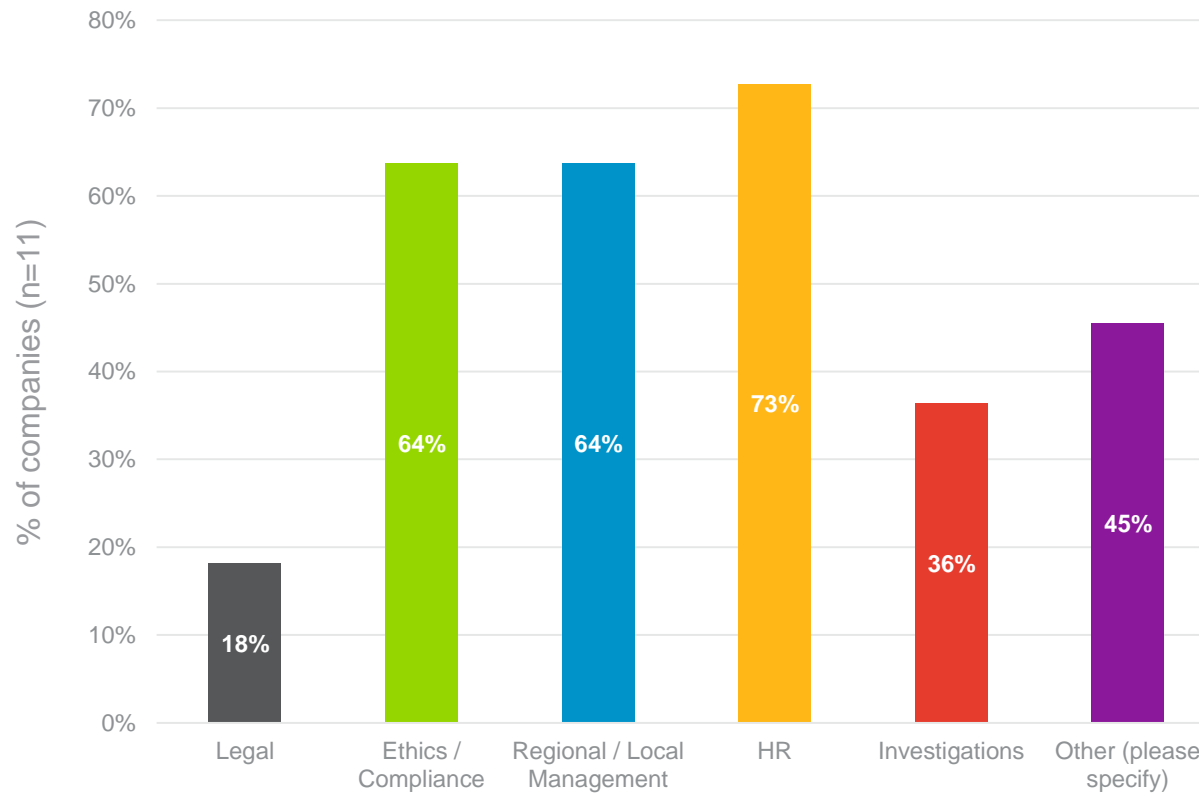
- For most companies, this activity involves multiple departments
- Responses for 'Other' included
 - 'Formal Disciplinary Committee'
 - 'Owner of compliance area, if outside of 'Legal/Compliance''

Question

- Which Department(s) determine the resolution of a confirmed incident?

Incident Resolution

Which Department(s) carry out the resolution of a confirmed incident?



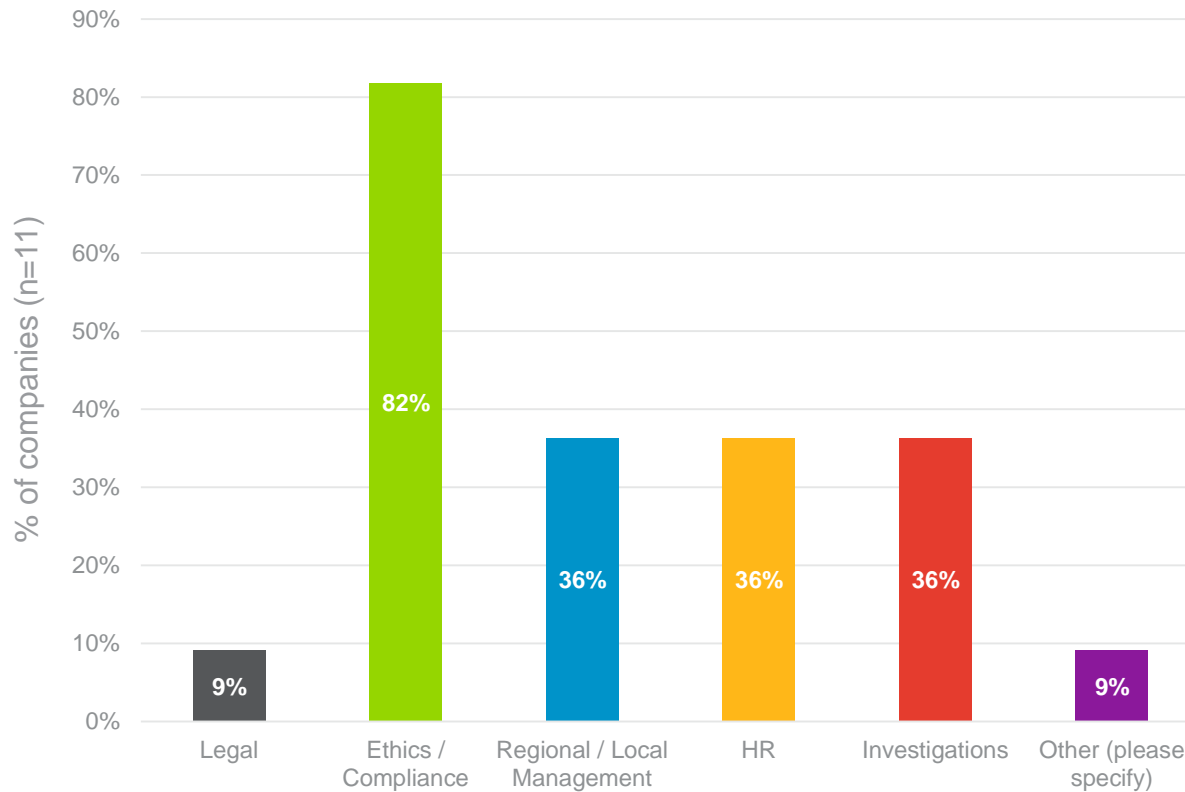
- For most companies, this activity involves multiple departments
- Responses for 'Other' included
 - 'Business Units'
 - 'Business Line Managers'
 - 'Cross-functional'

Question

- Which Department(s) carry out the resolution of a confirmed incident?

Incident Resolution

Which Department(s) monitor the resolution of a confirmed incident?



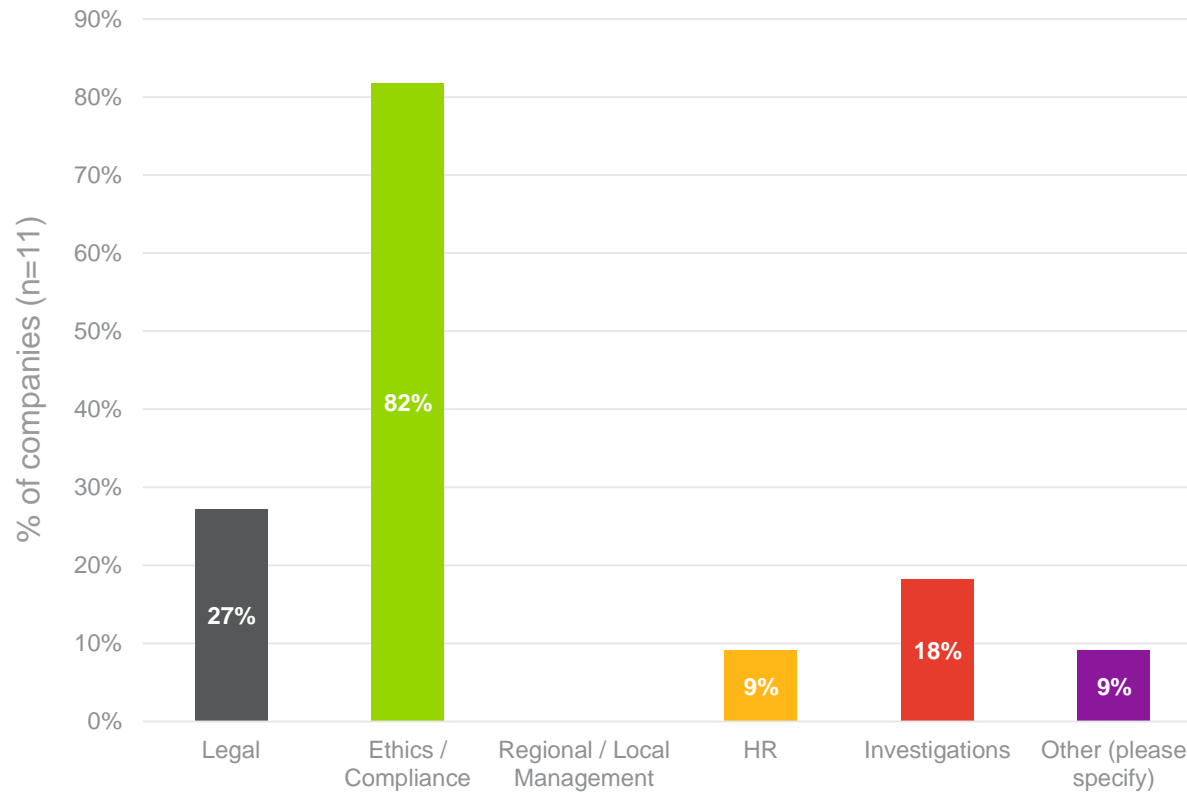
- For around 70% of companies, this activity involves multiple departments
- Response for 'Other' was
 - 'Internal Audit'

Question

- Which Department(s) monitor the resolution of a confirmed incident?

Reporting – Presentation to the Board

Which Department(s) present on misconduct/whistleblower reporting matters to the Board?



- For around 60% of companies, this activity is managed by only one function

Question

- Which Department(s) present on misconduct / whistleblower reporting matters to the Board?

Reporting - Benchmarking

- 40% of companies surveyed state that they conduct benchmarking of the misconduct/whistleblower process and reporting line
- Survey responses to describing the process include
 - *“Hotline and recording of incidents in EthicsPoint with a reporting line to the Chief Compliance Officer and Corporate Compliance Review Committee”* - Anonymous Survey Respondent
 - *“Navex and via this industry network”* - Anonymous Survey Respondent

Question

- *Is there benchmarking of the misconduct/whistleblower process and reporting line?*

Policy Structure and Content

- All companies have a misconduct/whistleblower SOP covering what issues must be reported
- 90% of companies have an investigation SOP covering how investigations need to be handled

Questions

- *Do you have a misconduct/whistleblower SOP covering what issues must be reported?*
- *Do you have an Investigations SOP covering how investigations need to be handled?*



Training and Resources

Funding for Investigations

- 45% of companies finance their investigations through central funding
- For 27% of the companies surveyed, the cost of investigations is charged back to the business
- The remaining companies adopt a hybrid model
 - *“Investigation of serious incidents is centrally funded and non-serious local incidents are charged back to the business”* – Anonymous Survey Respondent
 - *“The ones handled by the Global Investigations team are centrally funded, the other investigations are funded locally. Engagement of law firms are paid by Legal”* - Anonymous Survey Respondent

Question

- How are investigations financed? E.g. centrally funded vs. charge to the business vs. other

Systems and Tools used for Investigations

- The majority of companies use EthicsPoint for their investigations
- Other systems/tools mentioned by respondents include, People InTouch, i-Sight, SAP, VSOC, Relativity, Tableau

Question

- *What systems/tools are used for investigations?*

Resourcing for Investigations

Number of Employees Worldwide	Average number of in-house FTEs dedicated to misconduct/whistleblower matters		
	Receiving, Screening, Analyzing, Oversight	Investigations	Investigators
5,000 – 25,000	4	7	6
25,000 – 100,000	4	6	22
100,000 – 250,000	8	10	29
Over 250,000	2	n/a*	n/a*
All companies	5	7	17

- Companies did not provide enough data on external FTEs dedicated to misconduct/whistleblower matters

**Not enough data available*

Question

- How many FTEs are dedicated to misconduct/whistleblower matters?

Training for Investigations

- 90% of companies provide training for investigators
- Some of the respondents' answers to how investigators are trained include:
 - *“In-house activities including internal investigations awareness sessions, 1-2-1 sessions with Directors , on job training re interviewing and case management / business learning activities”* - Anonymous Survey Respondent
 - *“Certified Fraud examiner and internal training”* - Anonymous Survey Respondent
 - *“In-house training by Global Investigations Director, Corporate Legal, Finance/Internal Audit, Employment Law, and BU and Regional Legal and Compliance teams.”* - Anonymous Survey Respondent
 - *“Internal and external training on SOPs and good practice”* - Anonymous Survey Respondent

Questions

- Are investigators trained?
- If yes, please briefly describe how are they trained.

Record Keeping

- All companies keep records of investigations
- Companies vary the length of time in which they retain the records and who manages the retention
 - “10 years; retention managed by Legal” - Anonymous Survey Respondent
 - “Currently records are maintained indefinitely in the case management tool” - Anonymous Survey Respondent
 - “Records retained for 7-15 years subject to location and handled centrally” - Anonymous Survey Respondent
 - “Records storage depends on applicable laws, usually in the range of 10 years. Retention managed centrally by Legal & Compliance” – Anonymous Survey Respondent
 - “For confirmed case, 3 years. Ethics & Business Integrity is in charge of investigations records.” - Anonymous Survey Respondent
 - “Following the Corporate record retention policy & local DP laws, recommended is 5 years. Managed by local Compliance officers” - Anonymous Survey Respondent
 - “Global Investigations in Navex/EthicsPoint” - Anonymous Survey Respondent

Questions

- Are records of investigations kept?
- If yes, how long are the records kept and who manages the retention?



Operational Assessment

Publicizing Misconduct/Whistleblower Cases

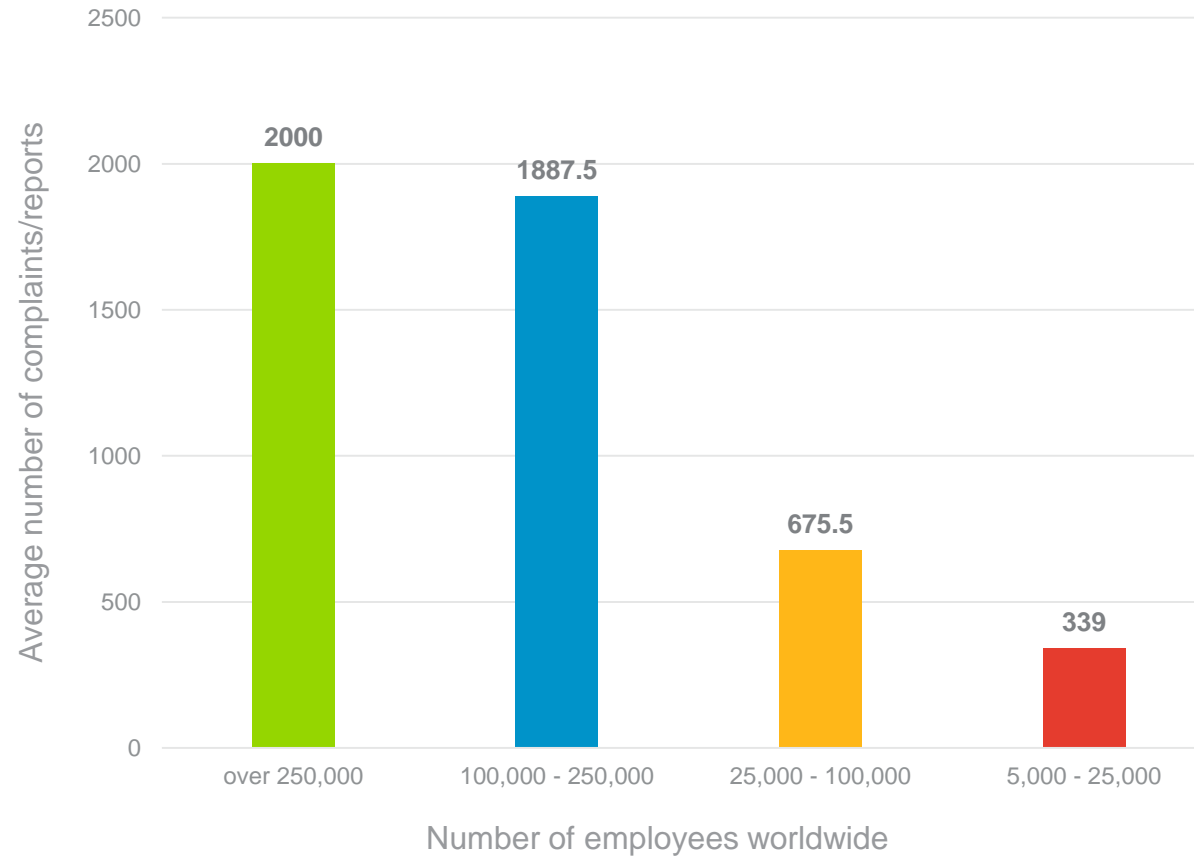
- Only around 35% of companies publicize misconduct/whistleblower cases internally
 - Of the companies that do publicize the cases internally, these cases are shared in the following manner:
 - *“Anonymized and via the dedicated SpeakUp portal, within the respective functions of Compliance, Legal, HR, manufacturing/QA, etc”* – Anonymous Survey Respondent
 - *“Cases are anonymised and used in case studies discussions and presentations to share learning. Briefings are given on a monthly and quarterly basis to relevant leadership regarding key issues, developments, findings and outcomes”* - Anonymous Survey Respondent
 - *“On-attributable summary of investigations and related outcome. Metrics provided to BU/Regional leadership on a quarterly basis.”* - Anonymous Survey Respondent
 - *“The high level information such as number of messages received, number of substantiated, consequence are communicated with employees by the markets in different compliance culture enhancement”* - Anonymous Survey Respondent
- Less than 20% of companies publicize misconduct/whistleblower cases externally
 - One company that externally publicizes does so with *“high level information”* communicated in the Company Annual Report.

Questions

- Do you formally publicize misconduct/whistleblower cases internally?
- Do you formally publicize misconduct/whistleblower cases externally?

Volume of Complaints

How many complaints/reports did you receive in the last calendar year?

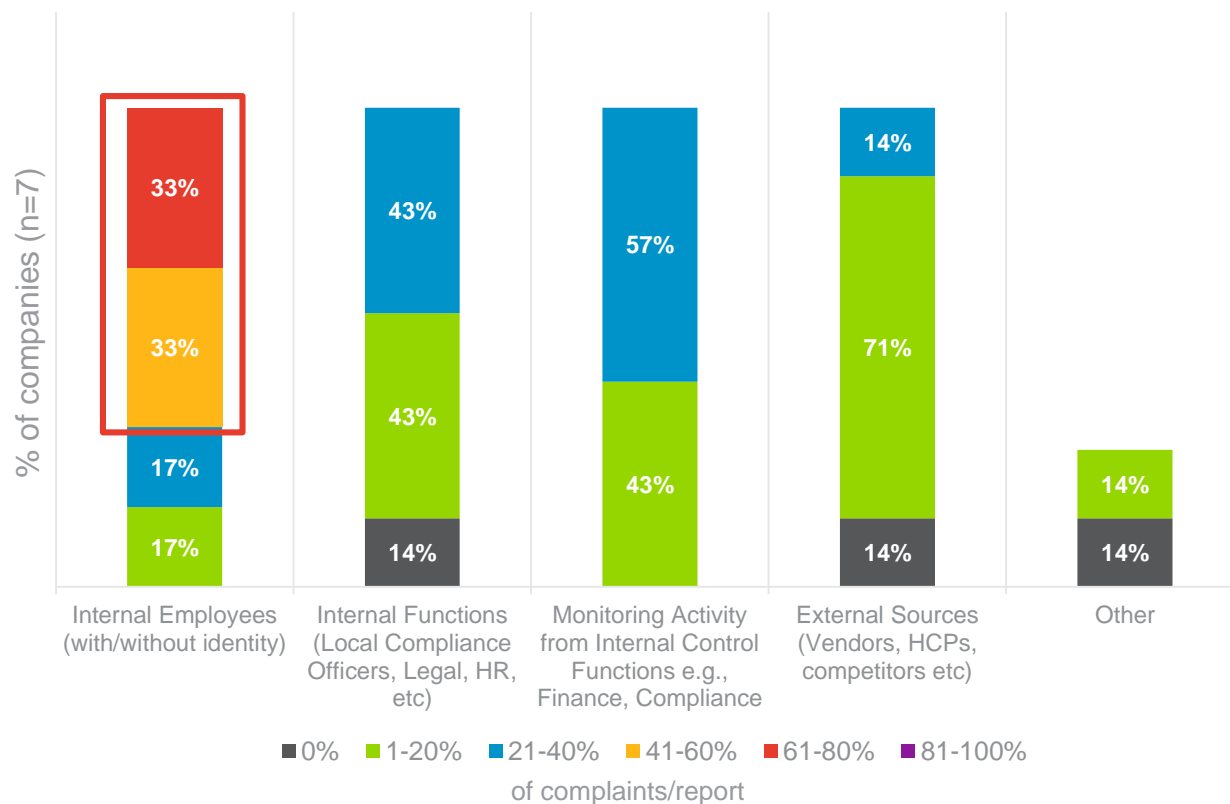


Question

- How many complaints/reports did you receive in last calendar year?

Complaints Intake Source

What % of complaints/reports did you receive by Source?



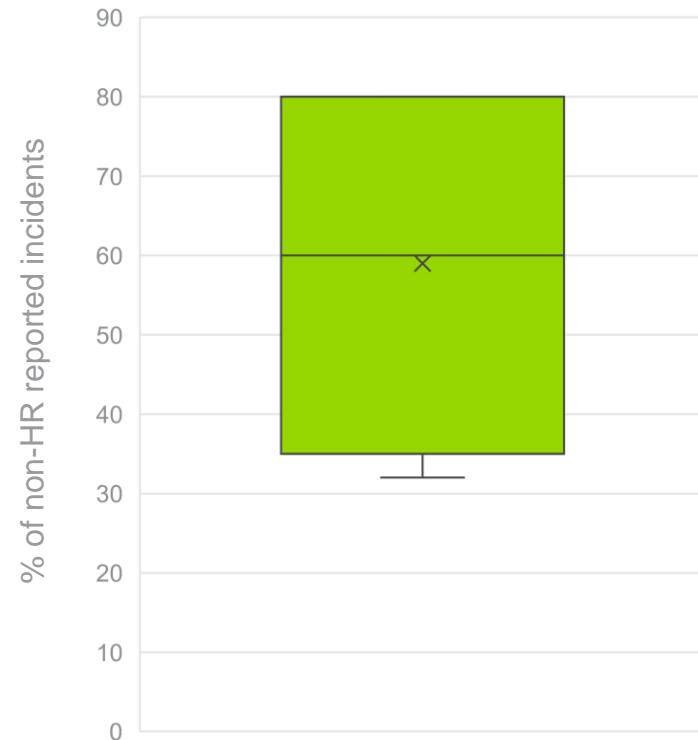
- The majority of companies (66%) received over 40% of their complaints/reports via internal employees
- All companies did not receive more than 35% of complaints/reports from each of the other individual source channels
 - All companies received less than 25% of complaints/reports from external sources
- The response for ‘Other’ is via ‘*anonymous whistleblowers*’

Question

- What % of complaints/reports did you receive by Source?

Reported Incidences

What % of reports are non-HR related?



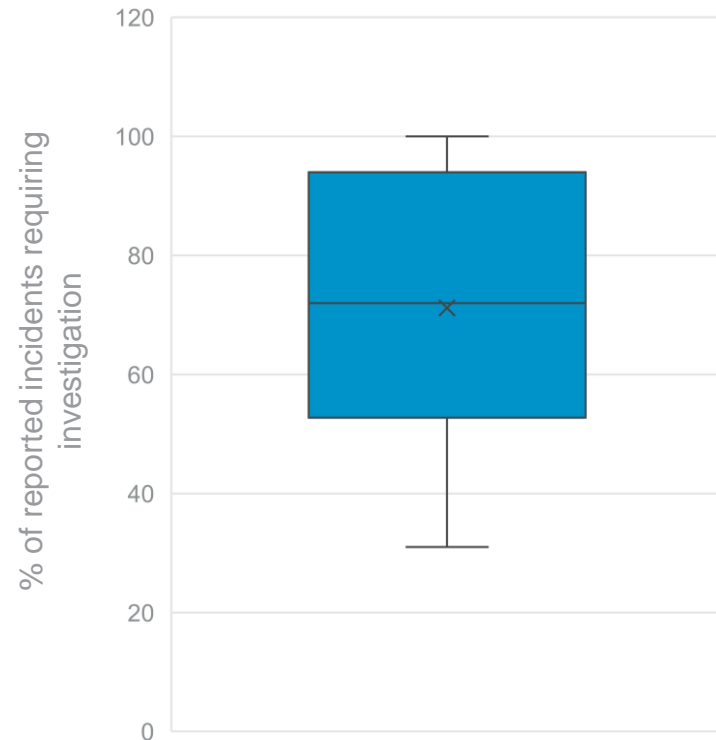
- The average % of reported incidents that are non-HR related is 59%
- The range between companies is 32 – 80%

Question

- What % of reports are non-Human Resources related?

Reported Incidences

What % of reports required investigation?



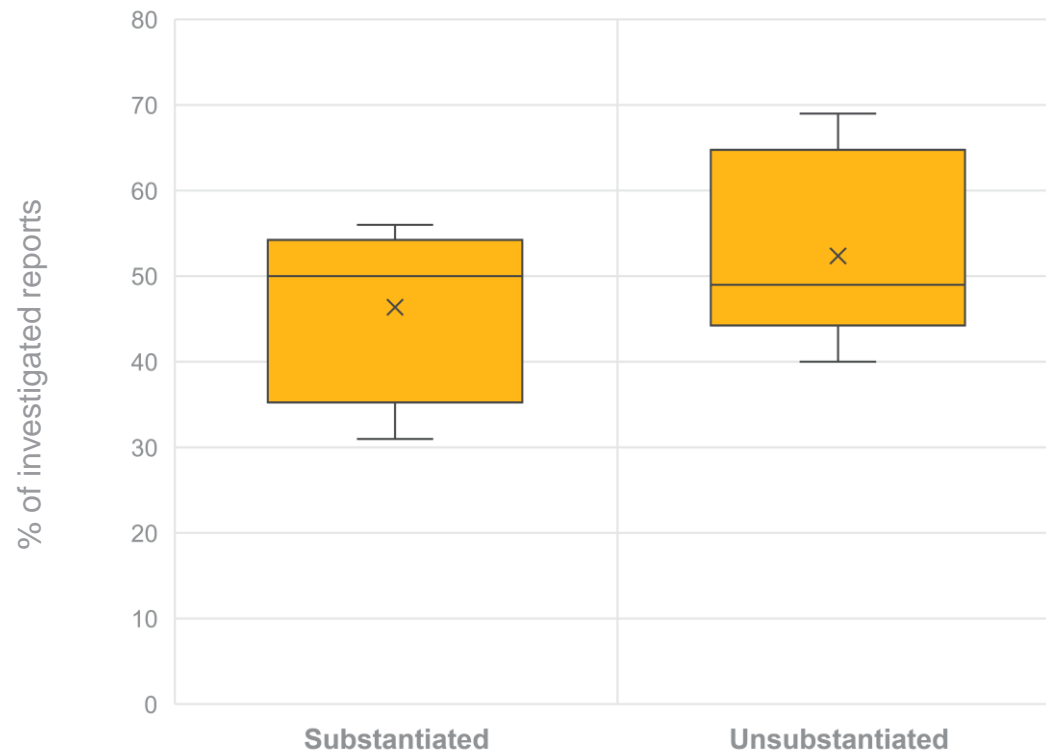
- The average % of reports that required investigation is 69%
- The range between companies is 31 – 100%

Question

- What % of reports required investigation?

Reported Incidences

What % of investigated reports are substantiated vs. unsubstantiated?



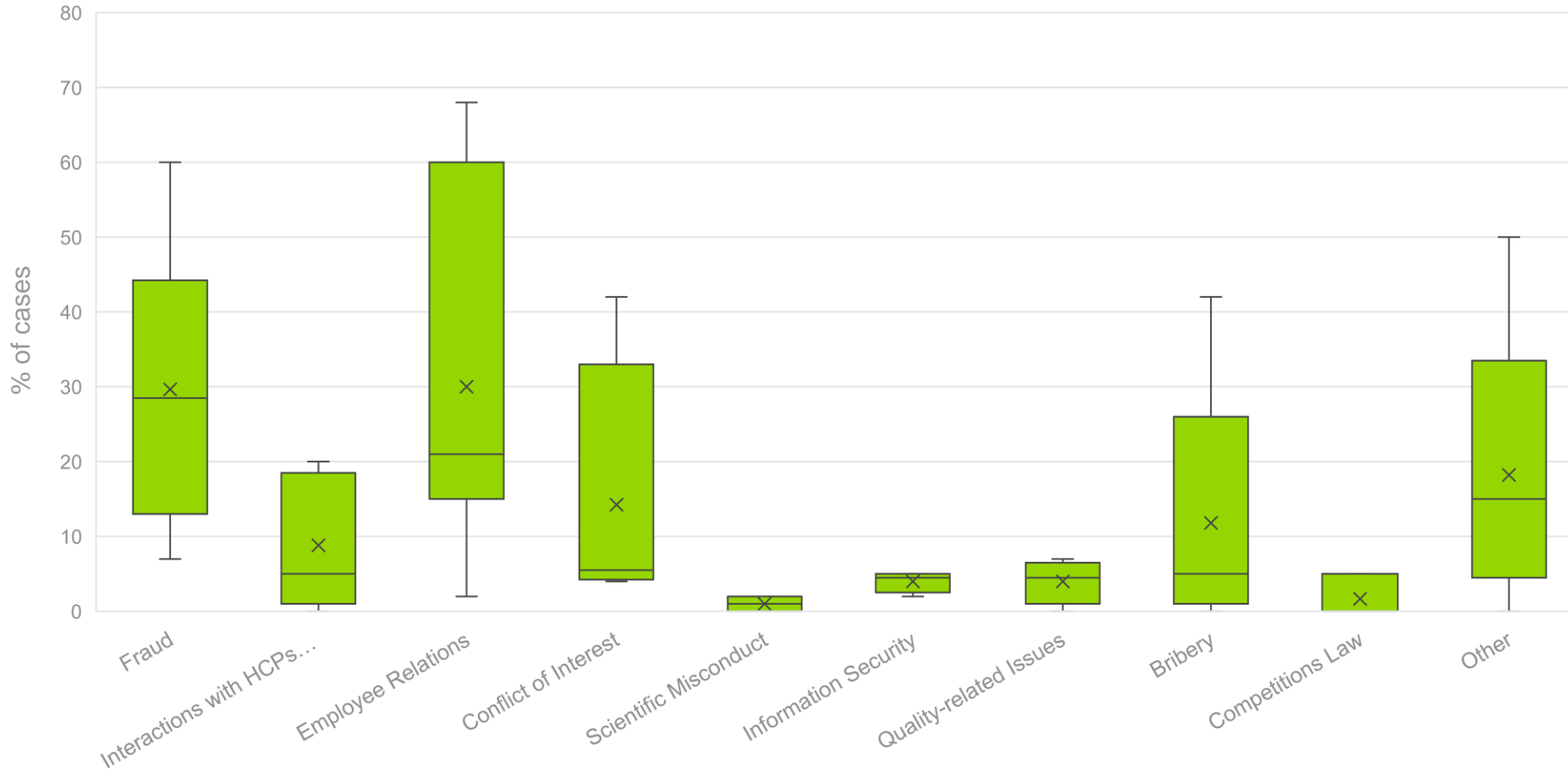
- The average % of investigated reports that are substantiated is 46% vs. 52% for unsubstantiated
- The range between companies for investigated reports that are substantiated is 31 – 56%
- The range between companies for reports that are unsubstantiated is 40 – 69%

Question

- What % of investigated reports are substantiated vs. unsubstantiated?

Categorisation of Complaints

For confirmed misconduct/whistleblower complaints, what is the % of cases by category?



- The % of cases by category varies significantly across companies

Question

- For confirmed misconduct / whistleblower complaints, what is the % of cases by category?

T&E Matters

- None of the companies surveyed have a threshold for T&E matters for cases of fraud

Questions

- *For cases of fraud, is there a threshold for T&E matters?*

Process Timelines

- 80% of companies do not have a timeline for overall reporting process of receipt to closure
 - The 20% of companies that do state 90 days as their timeline
- Half of the companies have a timeline for investigation of confirmed reports
 - The timeline ranges among companies between 30 – 180 days, with half of these companies stating 90 days

Question

- *Is there a timeline for overall reporting process? Receipt to Closure (days)*
- *Is there a timeline for Investigation of confirmed reports? Investigation (days)*