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Effective approaches to stakeholder pushback

by Frank Sheeder

At the core of every successful organization is a robust compliance program that not only ensures adherence to applicable standards but also fosters an ethical corporate culture. Navigating the compliance landscape demands a sophisticated blend of understanding, strategy, and foresight, as it involves multiple stakeholders with unique interests and perspectives. This complex interplay of interests often results in pushback against new or ongoing compliance initiatives, issues, and processes. Understanding and managing this pushback effectively is critical for ensuring smooth implementation of the elements of an effective compliance program and enhancing the overall integrity of the organization.

The objective of this article is to delve into the intricate subject of stakeholder pushback by first observing some common aspects of pushback and then offering pragmatic steps to deal with it. By addressing the multiple facets of this phenomenon—stakeholder interests, the reasons and ways in which pushback occurs, strategies to counter resistance, and methods to reinforce compliance despite the opposition—the aim is to offer in-depth guidance for compliance professionals. Compliance professionals equipped with the knowledge and tools necessary to navigate this challenging landscape can ensure a more effective, efficient, and trouble-free operation of their compliance functions. This topic is often overlooked or discussed quietly. Perhaps this article can contribute to a broader discourse on effective approaches to stakeholder resistance to compliance efforts.

The complexity of stakeholder pushback

Compliance is a shared responsibility at every level of an organization. It involves a broad spectrum of participants—each with unique experiences, roles, responsibilities, and perceptions. When they are combined, they create a multifaceted, complex compliance landscape. Stakeholders encompass everyone from employees at the lowest level to executive leadership, board of directors, patients, and other external stakeholders like the public and government regulatory bodies.

Given this diversity, it is not surprising that stakeholders hold varying interpretations of the role and importance of compliance programs and professionals, and sometimes choose not to accept compliance measures. These instances of resistance, or stakeholder pushback, are driven by a range of factors, including differences in perception, misunderstandings, perceived inconveniences, potential threats to their position or an agenda, or an assessment that the costs (financial, operational, etc.) of compliance outweigh the benefits. Such pushback can take numerous forms, ranging from passive resistance to active opposition to reluctance or delay in accepting change, lack of participation in mandatory training sessions or other activities, failure to cooperate in compliance processes, or even vociferous criticism of the compliance program or compliance professionals. Each form of resistance presents its unique challenges and requires specific strategies to handle and transform this resistance into acceptance and active support for compliance initiatives.

Decoding the compliance landscape: A multitude of stakeholder interests

To manage pushback effectively, it is imperative to first understand the diverse interests and motivations of the stakeholders involved. Each group of stakeholders—which include senior leaders, board members, legal advisors, compliance officers, government representatives, individuals raising issues (often whistleblowers), and those found responsible for noncompliance—hold distinct interests which significantly influence their views and behaviors regarding compliance issues.

Senior leaders, for example, often find themselves balancing a variety of concerns like business or operational interests, ethical considerations, reputational risks, cost management, and stakeholder relationships. They usually strive to do the right thing and to resolve issues swiftly. They often wish to manage the message, protect the organization and its people, and ensure accountability. Sometimes, however, they may hesitate to acknowledge or accept responsibility, perceive compliance initiatives as overly expensive or disruptive, or fear the negative repercussions of publicized noncompliance. When noncompliance arises, some might encourage compliance professionals to “fix it and forget it.”

Board members often share similar concerns as senior leaders, but from a narrower perspective. Their understanding of compliance issues is often more limited, leading to their reliance on senior leaders for information and advice. Their primary concern is protecting the organization and their reputations, and they are acutely aware of the potential for community backlash. They do not like surprises. Compliance professionals may be put in an awkward position when they are prevented from communicating with the board or committee chairs, especially when they feel leadership is not providing the full picture to the board.

Legal advisers and compliance professionals are entrusted with the dual responsibilities of acting ethically while safeguarding the organization and maintaining substantive and procedural integrity. They often face stakeholder complaints that they are being overly cautious or unnecessarily increasing the organization’s risk profile. They need to ensure effective communication, active engagement, and implementation of appropriate remedies that mitigate organizational and individual legal, financial, and reputational risks. Some organizations have not effectively defined their respective legal and compliance roles, which can lead to tension and misunderstanding between these professionals. The best practice is for legal and compliance professionals to develop protocols and informal understandings about how they will collaborate on key compliance issues. This is particularly important when there is a need to establish attorney–client privilege or attorney work product protection in a specific matter.

Government representatives are typically driven by a desire to enforce compliance, demonstrate results for their efforts, and set precedents and examples by penalizing noncompliant organizations. Their mission is to serve the public interest and protect government programs. However, stakeholders can sometimes perceive their approach as overzealous, biased, or devoid of specific industry knowledge, leading them to pursue marginal cases—especially when they are heavily invested. This tendency to demonize regulators and enforcers usually makes compliance processes more difficult and can skew stakeholder objectivity.

Those who raise issues or whistleblowers have their own set of expectations. While they expect the organization to act ethically, their perceptions of what that means may be distorted, overly enthusiastic, or unrealistic. They might assert their complaint was ignored or that the organization did not do enough in response. They often wish to be central to the investigation process and may be disruptive. Because they may enjoy legal protection from retaliation, compliance professionals must deal very carefully with complainants to avoid collateral legal consequences.

Lastly, individuals found responsible for noncompliance, or wrongdoers, typically try to avoid or deny

accountability. They may seek legal coverage or involvement in the investigation process. The extent to which they are kept informed during investigations can vary. They may also be entitled to certain legal protections, particularly if they hold senior roles.

Unmasking the themes of pushback

By understanding the interests of various stakeholders, we can start identifying common themes of pushback. These themes typically involve denial, rationalization, resistance to change, and accusations of unclear rules or excessive responses. These themes often manifest themselves in various statements made by stakeholders, such as:

- “I don’t want to be squeaky clean. Just clean enough.”
- “I don’t want to be a poster child for compliance.”
- “I can’t imagine a situation where I would admit we’ve done anything wrong.”
- “We have a policy, so we are fine.”

These statements reveal the cognitive dissonance that stakeholders often experience when faced with new or ongoing compliance measures or investigations. They reflect the underlying discomfort, fear, or skepticism that stakeholders might feel, providing valuable insight into the reasons behind their pushback. Such themes usually fall along the lines of:

- “It will never happen to us.”
- “We are an ethical organization.”
- “I am willing to take the risk.”
- “Everyone does it,” or its variation, “Our competitor does it.”
- “We have always done it this way.”
- “The rules are unclear.”
- “Changing our practice will put us out of business.”

When faced with these themes, prepared compliance professionals will have responses addressing the specific issues at hand instead of generic statements. It is always helpful, though, to bring the discussion back to the organization’s core values and the broad risks of not doing the right thing.

Turf wars

Turf wars can develop between compliance professionals and various other stakeholders. Sometimes they result from the differences between advocacy, oversight, and running a business. While the reasons turf wars develop vary greatly and often depend on interpersonal dynamics and politics, the outcome is that the compliance program’s effectiveness and reputation may be compromised when there is internal competition for work, power, recognition, or control. Sometimes there is stakeholder support for relegating the compliance role due to the perception that compliance activities can create risks. Unfortunately, if a compliance professional has not handled a process or relationship well in the past, they may soon be constrained when a new issue arises.

There are proven strategies to avoid turf wars. First, it is essential to ensure there is a place for every stakeholder

at the compliance table and they feel like they are heard and respected.

Compliance professionals who work hard to define roles and address issues collaboratively have greater long-term success. Being a resource, adding value, and acknowledging various viewpoints can also help. Defining roles before there is a crisis, celebrating small successes, and developing strong working relationships can all prevent internal struggles.

Identifying traits in self and others

Every organization has its unique culture, and everyone has their own style. Thoughtful compliance professionals assess these traits and proactively develop strategies that consider them. For example, it may be that someone (including the compliance professional) might shoot from the hip, be overactive, have a need to know all the answers, be a micromanager, strive to avoid conflict or be indecisive or malleable. Others could be informed, collaborative, empowered, good delegators, detached, champions of compliance, or active listeners. Knowing and understanding these attributes, and the behaviors that arise in their midst, can help compliance professionals develop effective strategies for dealing with stakeholders. One way to facilitate success is to identify shared interests, like accountability for all involved, high standards for compliance, credibility, appropriate communication, process integrity, and core values.

Addressing resistance: Effective strategies to counter pushback

Effective management of pushback is central to successful compliance program management. To do so, compliance professionals need to adopt a range of informed, judicious, thoughtful, deliberate, honest, and objective strategies. These strategies must not only address the resistance at hand but also preserve the integrity of compliance activities.

One such strategy involves emphasizing the protective nature of compliance measures for both the stakeholder and the organization. This can help change the narrative around compliance from being a burdensome obligation to a protective shield that safeguards the organization and its stakeholders from potential risks.

Another helpful strategy is the use of probing questions such as “Why do you ask?” or “What solution do you recommend?” Such questions can prompt stakeholder introspection, offering valuable insights into their resistance and often leading to a “reality check.”

Regular reminders of the organization’s core values and standards of accountability can also serve as crucial anchors in times of resistance. They can help realign the stakeholders with the organization’s ethos and the broader purpose of compliance.

Moreover, third-party validation can be a powerful tool to reinforce the importance and value of the compliance process. By leveraging the views and opinions of respected external advisors, organizations can effectively enhance the credibility of their compliance measures and counter-resistance.

Sustaining compliance amidst resistance: Strategies for reinforcement

Supporting compliance in the face of resistance demands clear expectations and meticulous planning. A strong compliance leader should oversee the process, using both internal and external resources optimally. It is vital to establish legal privileges and protections early on, anticipate the endgame, and set the stage for potential financial and other impacts.

Furthermore, fostering an environment where each person’s role is recognized and strong working relationships

are encouraged, can often help avoid power struggles. Compliance professionals should demonstrate flexibility, adhere to standards, avoid setting unrealistic expectations, and refrain from using polarizing language.

Determining roles before a crisis, focusing on partnership and open communication rather than secrecy, celebrating small victories, making appropriate use of legal privilege and work product protection, and resisting the urge as a compliance officer to fix things single-handedly (instead encouraging stakeholders to do so) can all contribute to a supportive compliance environment.

Avoiding pitfalls: Ensuring credibility and trust

In the quest to ensure compliance, it is imperative to be mindful of potential pitfalls. Overpromising, speculating, showing favoritism, and prematurely disclosing facts or strategies can all undermine the credibility of the compliance program and compliance professionals and hinder the progress of compliance measures. Similarly, it's critical not to compromise legal privilege or attorney work product protections or let rumors outpace the compliance process. Being aware of these potential pitfalls can help compliance professionals navigate the compliance landscape more effectively and ensure the effectiveness of compliance efforts.

Conclusion

The compliance landscape, with its myriad stakeholders and divergent interests, presents complex and challenging roles for compliance professionals. While pushback is an inevitable aspect of this landscape, it can be effectively managed with strategic, careful, and thoughtful responses that not only promote integrity but also underline the principles of accountability and established compliance standards.

By understanding each stakeholder's unique interests, proactively avoiding potential pitfalls, and fostering a collaborative and open approach, compliance professionals can ensure the successful implementation of compliance measures. The strategies and insights provided here aim to serve as a guide for these professionals, equipping them with the knowledge and tools necessary to successfully traverse the challenging compliance landscape and protect both the organization and its stakeholders from potential risks. There should be a broader discussion of this often-avoided subject, along with techniques for successfully managing stakeholder pushback.

Takeaways

- Compliance involves a diverse array of stakeholders, each with unique experiences, roles, responsibilities, and perceptions, leading to a multifaceted and complex compliance landscape. Stakeholder resistance to compliance efforts can vary greatly, necessitating tailored strategies to manage pushback effectively.
- Different stakeholders, such as senior leaders, board members, legal advisers, compliance officers, government representatives, and whistleblowers, have distinct interests influencing their views on compliance issues. Understanding these interests can help identify common themes of resistance and formulate effective counter-strategies.
- Effectively countering pushback involves strategies like emphasizing the protective nature of compliance measures, probing stakeholder resistance with questions, reinforcing the organization's core values, and leveraging third-party validation to reinforce the value of compliance.
- Avoid potential pitfalls such as overpromising, prematurely disclosing facts, compromising legal privileges, or letting rumors outpace the compliance process, which can undermine the credibility and effectiveness of compliance efforts.
- Encouraging a collaborative and open approach, recognizing each stakeholder's role, and fostering strong

working relationships can create a supportive environment for implementing compliance measures. Aim to understand and anticipate potential resistance, define roles before crises, and celebrate small victories to ensure the smooth operation of compliance programs.

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