WB UK WhistleblowersUK

INTERNATIONAL WHISTLEBLOWER REWARD PROGRAMMES:

IS THERE A PLACE FOR THEM IN THE UK?

MAY 2023

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"We know that whistleblowers are the single most effective means of detecting wrongdoing, but that whistleblowers are often reluctant to come forward because of the poor outcome for those who seek legal redress under the UK's Public Interest Disclosure Act 1998."

The Rt.Hon. Baroness Susan Kramer – making the case for reform of UK whistleblowing legislation December 7th 2022 -

What are whistleblower reward programmes and how do they work?

Whistleblower reward programmes are associated with the United States and have transnational reach, with citizens from at least 141 countries. The rewards provisions of these laws act as a means of raising awareness and incentivising whistleblowers to bring forward evidence that can assist law enforcement and regulators in their fight against crime, corruption and cover up.

We are grateful to Mary Inman and Stephen Kohn and their teams at Constantine Cannon LLP and Kohn, Kohn, and Colapinto LLP who worked with WhistleblowersUK to produce this report.

This paper provides an introduction to, and the arguments for and against, whistleblower reward schemes based on the U.S. and Canadian experience. These countries enlist whistleblowers to help root out fraud by offering them a percentage of any monetary recovery that arises as a direct result of the information provided by the whistleblowers. Let's start by dispelling a few myths. These programmes promise a percentage interest in the government's action to recover tax fraud and serve as a financial safety net, seeking to offset the considerable risks whistleblowers face. These risks can be substantial and, in many cases, have put an end to otherwise successful careers and include life-long career blacklisting. The incentives offered by these programmes encourage speaking up as the most effective means of exposing frauds that are otherwise difficult, if not impossible, for the government to detect.

The effectiveness of these programmes has resulted in discussions across the political spectrum about whether the UK should or could adopt similar programmes as part of the global war on economic crime and the levelling up agenda. Annual reports demonstrate that UK citizens have been proactive in seeking out US programmes and consistently remain the largest group in Europe to use them. Since 2011, when the programme started, UK whistleblowers have submitted over 783 tips to the US's Securities and Exchange Commission alone. This is just one of a handful of American agencies that welcome international tips. What we have learned from whistleblowers who have used these programmes is that they are most

attracted by the safety net that is provided; anonymity, confidentiality, contingency fee representation*, meaningful and robust anti-retaliation laws, large financial rewards, and most significantly, reassurance that action will be taken to address wrongdoing.

In a nutshell the government provides proper whistleblower protection and shares both the risk and the recovery.

U.S. Whistleblower Programmes
The False Claims Act

Any discussion about North American whistleblower reward programmes must start with the False Claims Act (FCA), the genesis of all US whistleblower reward programmes.

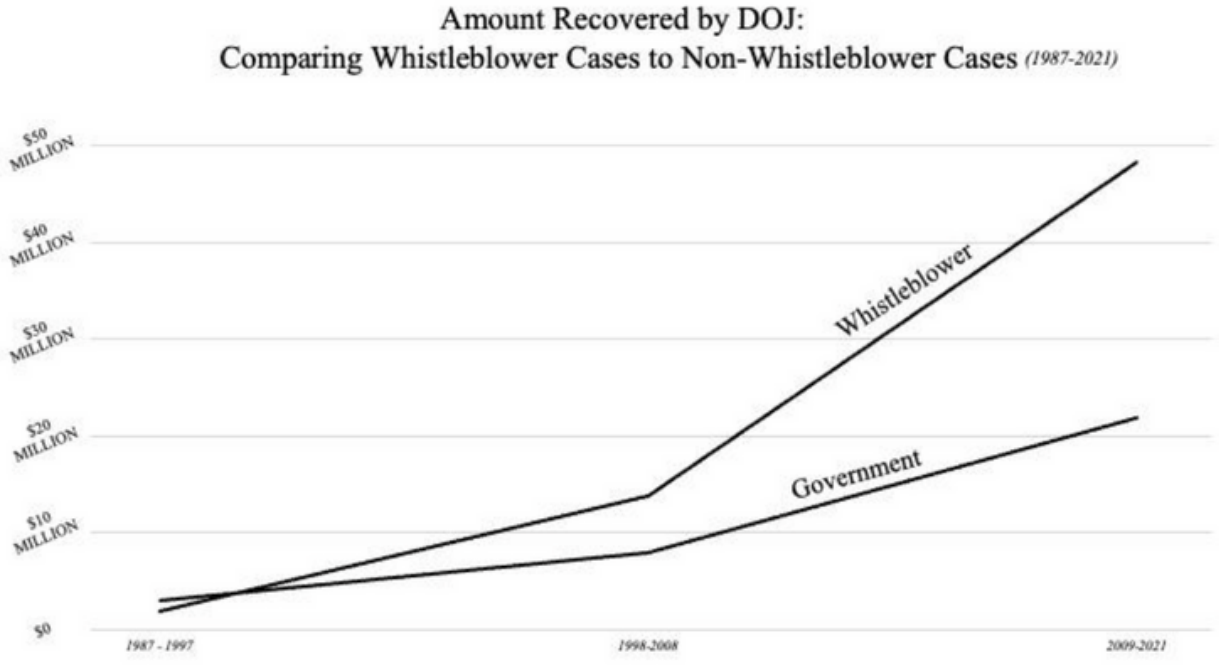
Originally enacted in 1863 during the U.S. Civil War the FCA was introduced to combat the fraudulent sale of substandard supplies to the Union Army, including rancid food and defective weapons. The FCA has since grown to become the Department of Justice's (DOJ's) most effective tool for prosecuting frauds against the US government through its unique approach to harnessing the power of whistleblowers.

Recognising the government's limited resources and ability to detect and prosecute these frauds on its own, the FCA reached back to thirteenth-century English common law to revive the concept of qui tam, derived from the Latin phrase, "he who sues on behalf of the King as well as for himself". This ancient law allowed any of the King's subjects the ability to prosecute a claim on the King's behalf and receive a statutory portion of the recovery and it worked well for many centuries. Through the adoption of qui tam provisions, the FCA allows private citizens with information about fraud, also known as relators, to bring a suit on the government's behalf to help recover government funds lost to fraud. To encourage whistleblowers to undertake the personal and professional risks inherent in speaking out and bringing a qui tam lawsuit on the government's behalf, the FCA rewards these private citizen relators/whistleblowers with 15-30% of any recovery the government obtains through the whistleblower (relator's) lawsuit.

Despite its lofty aspirations and early promise, the FCA suffered initial setbacks in the courts, and it remained largely overlooked and underutilised until the 1980s when a wave of egregious cases of fraud came to light. Unscrupulous defence contractors were found to be charging $400 hammers, $1,000 bolts, and $7,000 coffeepots and other pervasive ongoing frauds triggering renewed interest in the FCA and prompted significant legislative amendment to the Act in 1986, 2009 and 2010 by congress.

These amendments enhanced the US government's ability to protect, encourage and empower whistleblowers to help recover losses sustained because of fraud. The amendments were designed specifically to encourage individuals with knowledge of fraud to disclose the information without fear of reprisals or government inaction, and to encourage a cadre of private attorneys who represent whistleblowers to commit legal resources to prosecuting fraud on behalf of the government. The most significant amendments from 1986 included; the imposition of triple damages on wrongdoers, an increase of the maximum percentage of the recovery a whistleblower could receive to 30%, and the addition of significant anti-retaliation protections for whistleblowers.

By the mid 1990's, hundreds of millions of government dollars were recovered under the FCA every year, with tens of millions in rewards going to whistleblowers. By the year 2000 the impact of extending the scope of the FCA beyond defence contractors into other industries, including healthcare and banking turbo charged recoveries now into billions of dollars. This trend continues with FCA enforcement actions up year on year and the total recovered under this law now exceeding $70 billion in civil settlements and criminal fines as a result of whistleblower-initiated claims [1].



These figures demonstrate that qui tam is the driving force behind the FCA's success in combating fraud against the US government by in effect deputising powers to whistleblowers allowing them to act as private prosecutors and launch lawsuits in the government's name.
The DOJ, Congress, and Supreme Court have repeatedly recognised the invaluable role of whistleblowers in intercepting crime, corruption and cover up and the recovery of taxpayer's money. DOJ issue press statements that promote the statute's incentive structure and trumpet the important role that whistleblowers perform in helping the government fight fraud.

Former DOJ Assistant Attorney General Chad Readler said "...because those who defraud the government often hide their misconduct from public view, whistleblowers are essential to uncovering the truth," and further added that DOJ's FCA recoveries, "...continue to reflect the valuable role that private parties can play in the government's effort to combat false claims concerning government contracts and programs." [2]

Congress and the Supreme Court have likewise highlighted the important role whistleblowers and whistleblower rewards have played in strengthening the Act. "We do not doubt that Congress passed the 1986 amendments . . . 'to strengthen the Government's hand in fighting fraud claims' and 'to encourage more private enforcement suits."; [3] H.R. Rep. No. 660, 99th Cong., 2d Sess. 22 (1986) "[T]he purpose of the 1986 amendments was to repeal overly-restrictive court interpretations of the qui tam statute [and to encourage] private individuals who are aware of fraud . . . to bring such information forward.".

The SEC and CFTC Whistleblower Programmes adopted under Dodd-Frank

In July 2010, inspired by the success of the whistleblower provisions of the FCA and still smarting from the effects of the SEC's failure to heed whistleblower Harry Markopoulos's repeated warnings of the Madoff Ponzi scheme that contributed to the 2008 financial crisis, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act. This law is known colloquially as "Dodd-Frank."

One of the most important components of the broad overhaul of the US financial regulatory system was the enactment of whistleblower programmes within the SEC and Commodity Futures Trading Commission (CFTC). Dodd Frank adopted the now successful FCA formula to ensure that whistleblowers with knowledge of securities/commodities laws violations are financially incentivised to share this information with the SEC/CFTC (regulators). Like the FCA, the whistleblower programmes under Dodd-Frank provide a whistleblower reward of up to thirty percent of any fine or penalty the SEC/CTFC imposes because of information provided by the whistleblower in the form of what the American's call a 'tip'.

In passing this legislation, Congress replaced an outdated SEC whistleblower programme set up to attract whistleblowers with information about insider trading. The original law had been unsuccessful largely due to the fact that it left entirely to the SEC's discretion the decision whether or not to compensate whistleblowers[4]. In improving legislation Congress recognised the critical role mandatory financial awards play in encouraging whistleblowers to undertake the not inconsiderable personal and professional risks associated with providing information regarding securities/commodities law violations to the regulators, SEC & CFTC.

Over the 10 years since the passage of Dodd-Frank, as word of the programs and their success has spread, whistleblower tips to the SEC and CFTC have grown from an initial trickle to the current flood. Since the start of the program, the SEC has received over 52,400 whistleblower tips, with more than 12,300 tips in 2022 alone. Notably the largest number of tips received from whistleblowers in a single fiscal year. [5]

Whistleblowers have and continue to provide essential information that results in the imposition of substantial fines and penalties against transgressors and many of the whistleblowers have been and will continue to be recognised by the payment of 'rewards', in some cases very significant awards.

In the 2021 annual report to Congress, the SEC's Office of the Whistleblower made clear that financially incentivising whistleblowers is essential to its programme's success stating, "We hope that the awards made in FY 2021 will continue to incentivise others to come forward and to report high-quality information regarding potential securities laws violations to the Commission", because "whistleblowers make a tremendous contribution to the agency's ability to detect securities law violations and protect investors and the marketplace." [6]

The CFTC program has experienced similar success. Since issuing its first award in 2014, the CFTC has awarded over $330 million to whistleblowers whose information has prompted the CFTC to impose more than $3 billion in sanctions.

Like the SEC, when awarding its largest ever single whistleblower award in 2021, the CFTC acknowledged that the, *"whistleblower's information led the [regulator] to important, direct evidence of wrongdoing".* [7] Earlier in 2019, when awarding its now second largest award, the CFTC Chairman commended the vital role whistleblower rewards play in the agency's enforcement arsenal: "We hope that an award of this magnitude will incentivise whistleblowers to come forward with valuable information and provide notice to market participants that individuals are reporting quality information about violations." [8]

The year on year increase in whistleblower reports from around the world reinforces the impact of meaningful incentives.

Rewards - It's not British, or is it?

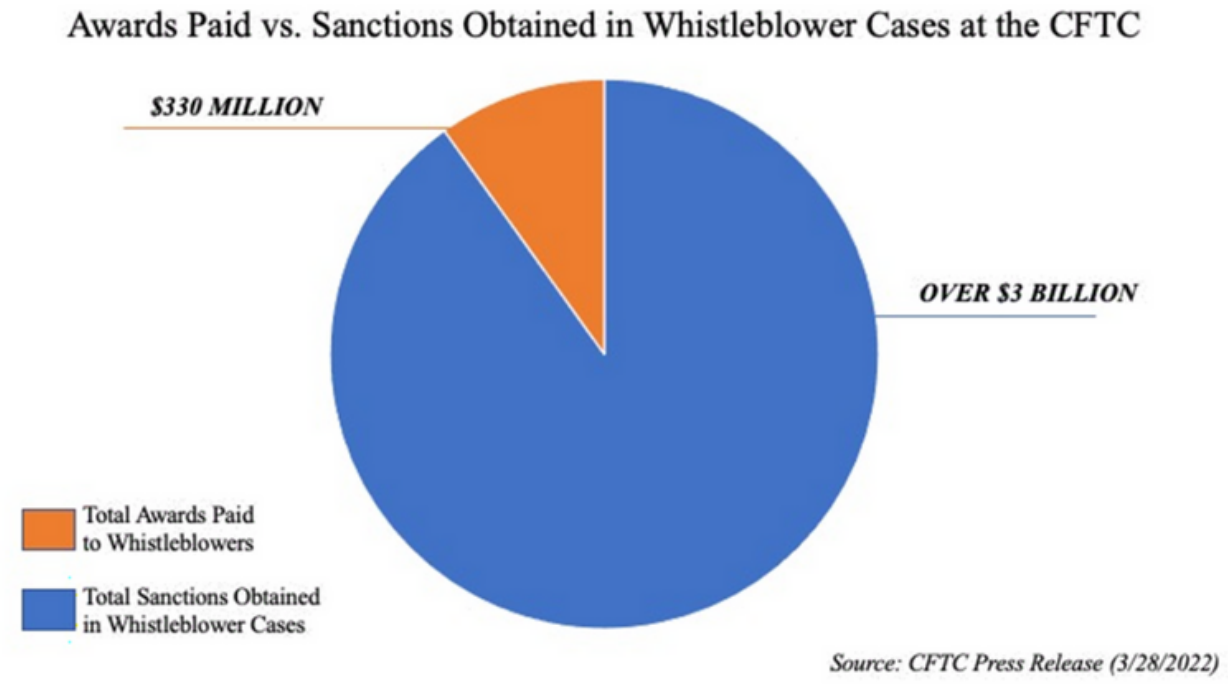
In 2021, 20% of all rewards paid were awarded to whistleblowers from outside of the US - 99 different countries in total. In 2022, largest number of international tips came in the following order from: Canada, the UK, Germany, China, Mexico, and Brazil.

Across Europe British Citizens are consistently the highest users of US whistleblowing programmes.

Since the inception of the program, the SEC has paid a total of $1.1 billion in whistleblower awards to 214 individuals.

Another objection that is advanced in the UK is cost, that an office of the whistleblower would be another burden on the taxpayer. Evidence in the US dispels this argument highlighted by the CFTC.

Over the 10 years that the CFCT programme has been operational it has recovered in excess of $2,649,018,000, the cost of running the CFTC over this period is less than $21m, demonstrating that whistleblowing is profitable for the US Government.



The Internal Revenue Service (IRS) Whistleblower Programme

The Internal Revenue Service (IRS) Whistleblower Programme between 2007 and 2021 collected $6.4 billion as a direct result of whistleblower tips exposing individuals who evaded their US tax obligations. During this same period, the IRS paid $1.05 billion in awards to more than 2,500 whistleblowers, which represents approximately 21.5% of the total proceeds the IRS have recovered as a result of whistleblower tips. [9]

The current IRS Commissioner recently said, *"Tax whistleblowers provide valuable leads and often offer unique insights into compliance challenged taxpayers. In these situations, the Whistleblower Office is charged with processing financial awards to people who provide information about the tax indiscretions of others. It can be lucrative for the informant (whistleblower) and greatly enhance the ability of the IRS to pinpoint tax noncompliance without having to unnecessarily utilise limited tax enforcement resources."*

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In addition to the programmes already discussed there are a number of other Whistleblower Programmes, every single one of which is helping stop a wide range of criminal activity.

Anti-Money Laundering Programme

In 2021, the U.S. government adopted the long anticipated anti-money laundering (AML) whistleblower programme which created a new enforcement regime largely modelled on the one used by the SEC. This new whistleblower programme was passed as part of the Anti-Money Laundering Act of 2020 (AMLA) forming part of the National Defence Authorisation Act (NDAA). The new regime is administered by the Department of Treasury's Financial Crimes Enforcement Network (FinCEN). It provides for mandatory awards to whistleblowers who make disclosures of violations of the U.S. Bank Secrecy Act (BSA), one of the primary laws for combating money laundering in both the US and internationally.

Under the new AML whistleblower programme, a whistleblower is eligible to receive a reward of up to 30% of monetary sanctions in excess of $1m imposed on the BSA violator by the government. In December of 2022, the Anti-Money Laundering Whistleblower Improvement Act was passed to add further protections onto the pre-existing AMLA. This included confidentiality and anonymity and gave the law transnational reach to include reports of money laundering and sanctions-busting. For the whistleblower it means that if the government brings an enforcement action, the whistleblower is eligible for an award.

FinCEN's Acting Director in a recent interview set out positive expectations for the new AML programme acknowledging that while it is still in early stages the department eagerly anticipated results because of the incentivises available to whistleblowers to share valuable information and significantly contribute to FinCEN's compliance and enforcement efforts. [11]

Canadian Whistleblower Programmes

The success of US whistleblower reward programmes has inspired the adoption of similar programmes worldwide, including in Canada where they have two whistleblower laws with rewards provisions. These programmes are managed by the Canada Revenue Agency's Offshore Tax Information Program ("OTIP") launched in 2014, and the Ontario Securities Commission ("OSC"), created in 2016.

OTIP, administered by the Canadian Revenue Agency ("CRA"), offers awards to whistleblowers if the disclosed information related to international tax non-compliance leads to a compliance or enforcement action resulting in the collection of more than CAD $100,000 of federal tax. The award will range between 5% and 15% of the tax collected. From the launch of the programme to March 2022, the CRA received 979 tips from whistleblowers, coming from all over the world. These tips resulted in the collection of CAD $69.3 million in tax recovery. Although the CRA does not disclose the amount of whistleblower awards paid, it has been reported that the agency has entered into 58 contracts with informants. [12]

The second Canadian programme, the OSC Whistleblower Programme, offers awards to individuals who report information regarding violations of Ontario securities laws. Since the program's inception, the OSC has paid nearly CAD $9m in rewards to whistleblowers [13] . In the period from the programme's launch until July 2021, it had generated approximately 650 tips from whistleblowers across Canada and over 15 foreign countries [14].

In March 2022 the OSC issued an award of nearly a quarter of a million dollars to joint whistleblowers and between 2020-2021 received 164 whistleblower tips [15]. The Canadian whistleblower programme has been hailed as a game changer for securities enforcement. Success of the programme is attributed to the adoption of a rewards programme for informants (whistleblowers) which has enabled the OSC to tackle complex misconduct that might not otherwise come to light [16].

EU Whistleblowing Law

The EU announced the introduction of the EU Directive in 2019 giving EU member states until 17th December 2021 to transpose the directive. The directive was based on PIDA but included notable improvements (although flawed by the fact that they allowed autonomy to member states in relation to the transposition). Transposition has failed to meet the deadline and Brussels has recently announced that it is taking action against key member states including Germany and Luxemburg who have resisted and challenged the directive. The future remains uncertain for whistleblowers across the EU who are now confronted with a patchwork of legislation that differs from member state to member state. However, there could be some light at the end of the tunnel after Spain announced far reaching rules to be managed by an Office of the Whistleblower and including significant fines for non-compliant organisations and nominated WB officers but stopped short of introducing any form of reward programme. Luxemburg have announced whistleblowers are the single most valuable asset in the fight against economic crime.

Feedback from global organisations indicates that the EU directive has been a positive move for improving awareness of whistleblowing and has increased reports, but the patchwork of legislation has caused fragmentation and confusion about how to manage whistleblowers and their reports. It is too early to draw any meaningful conclusions about the effectiveness of EU directive but the signs are not overwhelmingly positive. The inconsistency and objections continue to drive EU citizens toward the North American reward programmes, Germany now competes with the UK as the most prolific users.

Are awards just and necessary compensation to offset personal risk?
The argument for incentives

There is now clear empirical evidence that the US and Canadian whistleblower reward systems work, not only in their own jurisdictions, there is also a simple policy rationale for the use of financial incentives. That they encourage the disclosure of information otherwise hidden that helps law enforcement agencies to intercept crimes and stop harm to the public, and that they also recover huge sums of taxpayer money and fines that are reinvested in public services.

Increasingly the argument for rewards is deemed to be just and necessary because they seek to compensate whistleblowers for exposing themselves to risks that can be incumbent to exposing wrongdoing. Around the world laws have been or in the process of being set up to protect whistleblowers. These laws arise from the known consequences associated with whistleblowing; of repeated retaliation, estrangement, alienation, career-long blacklisting and, in extreme circumstances, the physical safety of whistleblowers remains very real. We know this from our first-hand experience of working with whistleblowers who routinely experience retaliation including personal loss. Academic studies, including our own, reinforce the reality of these fears. The UK has gone from leading the world to trailing and increasingly being left further behind.

A 2013 National Business Ethics Survey The UK's whistleblowing law is now ranked in the lower third of all international law conducted by the US non-profit Ethics Resource Centre (ERC) and published in 2015 reports that "[m]ore than one in five workers (21%) who reported misconduct said they suffered from retribution as a result . . . . Asked why they kept quiet about misconduct, more than one-third (34%) of those who declined to report said they feared payback from senior leadership. Thirty percent worried about retaliation from a supervisor, and 24 percent said their co-workers might react against them" [17]. A study of pharmaceutical industry whistleblowers published in the New England Journal of Medicine revealed the personal toll to whistleblowers includes a strain on personal relationships and the development of stress-related health problems [18].

Financial incentives can provide some measure of just recompense and a safety net against the significant and well documented hardships imposed on so many whistleblowers.

In the US and Canada financial incentives have enabled whistleblowers to partner more easily with qualified counsel to represent them through the arduous legal process. In the UK whistleblowing is embedded in employment law. Around the world whistleblowing cases have two things in common feature – they are complex, and they are not an employment issue.

Whistleblowing cases come with their own playbook designed to completely exhaust the whistleblower, morally and financially into capitulation. These cases are document heavy and protracted requiring expert legal advice and support through every step of the way. Even with this support whistleblowers can become overwhelmed, traumatised, and suffer PTSD. Protect the whistleblowing charity recently stated that they advise whistleblowers to find and get established in a new job before blowing the whistle as a means of protecting themselves against retaliation. Reinforcing the need for a complete overhaul of UK whistleblowing legislation.

Reward programmes have demonstrated that whistleblowers can access expert legal assistance. In North America lawyers mainly act on a contingency fee basis. This not only provides access to justice but also saves the government time because they weed out unmeritorious claims, HR disputes and complaints.

The increase in take up by international whistleblowers is seen by US and Canadian regulators to be recognition that reward programmes incentivise organisations to take their compliance obligations more seriously in the home countries.

Arguments against incentives

In the UK the principal argument against whistleblower reward programmes is that "it is not British". That whistleblowers do not expose wrongdoing for the money and that rewards would be unjust and immoral. Much of this arises due to the scale and size of the public sector in the UK where losses due to fraud alone now amount to over £193 billion and affects one in 11 adults. Most of this fraud originates in the private sector.

Whistleblowers have for some time been recognised as the single most effective means of identifying and tracing fraud across all sectors, confirmed by the association of professional fraud examiners (APFE) in their recent reports. Despite this knowledge whistleblowers in the UK remain largely disincentivised from speaking up by the ineffective, distrusted and discredited Public Interest Disclosure Act (PIDA).

PIDA has been described by academics and commentators as a paper shield which provides a limited and subjective protection against detriment, including being dismissed after blowing the whistle and is grounded in employment contract law. Having walked through thousands of whistleblowing cases this is an accurate description. A law with no teeth, and a law that makes no provision for the investigation of allegations which often fall into the category of serious criminal activity. While the Employment Tribunal has the power to refer evidence to the Crown Prosecution Service or the Police and regulators, there is no evidence that it has exercised this power in the 25 years since it was first introduced. As a result many whistleblowers remain trapped in a lifelong cycle of despair caused by the fact that their concern has not only not been investigated but that the public has been put at risk or harm. It is not workers (the people who are protected under PIDA) but others who self-identify as whistleblowers that have reported that they have failed to report concerns because of their fear of the personal consequences.

Unlike the North American programmes PIDA permits only those deemed a 'worker' to bring a case which is designed with the sole objective to recover compensation for detriment they are subjected to. The Employment Tribunals have awarded an average compensation of £28,500 (data from ET 2015 -2019), significantly less than the cost and actual losses experienced, nor do these awards take account of the often-substantial legal fees. PIDA cases are notoriously perilous to the whistleblower as exemplified by the 4% success rate

and the high number of people who never again work in their chosen profession again. Examination of the annual reports provided by prescribed persons further demonstrates the inadequacy demonstrating inaccurate and incomplete data.

Many cases are resolved by settlement agreements and remain under the radar as does what happens to the protected disclosures.

However, what is known is that despite repeated advice from the Solicitors Regulatory Authority, the use of settlements to impose conditions that amount to NDA's still prevails across both the public and private sector. This practice serves to discourage the raising or the pursuit of concerns to regulators and law enforcement and curtails the rights of whistleblowers and the Public Interest.

In summary the employment tribunal has failed to protect whistleblowers or incentivise whistleblowing, because the evidence, meticulously prepared by whistleblowers and their representatives has been resigned to dusty files instead of helping the government to intercept often very serious life-threatening crime and fraud.

In the UK, the principal arguments are typically twofold:

Firstly, that rewards lead to frivolous filings and therefore waste government resources, and secondly, that encouraging whistleblowers to bring information to the government will discourage internal reporting and undermine internal ethics and compliance programmes. Neither argument has been borne out by the US experience.

The US agencies operating whistleblower reward programmes, DOJ, SEC, CFTC and IRS have reported no evidence of frivolous or malicious filings. To the contrary, the fact that a large percentage of whistleblowers' claims are submitted via attorneys ensures that such frivolous or malicious claims are weeded out. Whistleblower lawyers are compelled to adhere to a number of procedural, ethical and other rules that forbid them from assisting clients to submit frivolous or malicious claims, many of which impose sanctions upon law firms and/or clients for engaging in such behaviour [19]. Since most whistleblower counsel are paid on a contingency fee basis (i.e. paid a percentage of the whistleblower reward), it makes business sense to thoroughly vet whistleblower cases and only pursue matters based on research and analysis that are likely to succeed.

Instead of encouraging frivolous claims, the incentives afforded under the US whistleblower reward programmes have resulted in a greater number of meritorious whistleblower complaints, leading to a greater number of successful enforcement actions. Research shows more whistleblower claims are submitted in areas where rewards are offered than where they are not [20].

Second, the concern that government incentives interfere with or undermine employers' internal compliance programmes is equally unfounded. In the US the business community made this argument as part of an unsuccessful attempt to water-down the SEC and CFTC whistleblower rewards programmes during the last consultation period. Contrary to arguments there is no evidence that financial rewards drive whistleblowers to report directly to the government in the first instance, but there is evidence to demonstrate that the majority of whistleblowers report to programmes only after they have frustrated internal reporting mechanisms.

Research demonstrates that in most cases individuals who blew the whistle to the government only did so after attempting to resolve issues internally. Breaking this down further in the case of the SEC programme over 75% of the whistleblowers who have received awards from the SEC in 2021 tried to report internally before going to the regulator [21].

The 2013 National Business Ethics Survey found that only 3% of whistleblowers go directly to the government to report fraud or misconduct. Research suggests that this figure does not seem to have changed very much in the intervening period.

Whistleblowing tends to start within the company or organisation, often vociferous attempts are made to expose and attempt to ensure that a remedy to the wrong is undertaken. It is only after many failed attempts to resolve issues internally and the onset of retaliation that whistleblowers take their concerns to the government [22]. This identical pattern is witnessed in the UK.

On the ethical side of the whistleblowing debate, critical arguments often contend that individuals should report wrongdoing because it is simply "the right thing to do" and, as such, financial rewards undermine the morality of whistleblowing. However, such a categorical position ignores the heavy price that truth-tellers pay for coming forward. At the highest degree of generality whistleblower rewards have been proved to incentivise individuals to step forward. However, the central concept behind offering monetary rewards is to offset the inherent risks blowing the whistle entails. The various US whistleblower programmes recognise that whistleblowers act in the public

interest, rather than their own, yet may suffer significant personal detriment. According to a report by the US non-profit organisation Taxpayers Against Fraud, a desire to bring cheaters to justice and protect the public on the one hand, and to be compensated for risk involved on the other hand, are by no means mutually exclusive. A person can view oneself as motivated by ethics but, at the same time, require a potential financial award to offset the uncertainty, financial detriment and other costs of whistleblowing [23]. Whistleblower laws are therefore about incentivising integrity in order to efficiently ferret out fraud.

Another related argument against financial incentives is that large awards undermine public confidence in whistleblowers, in that those who bring wrongdoing to light are in fact motivated by significant personal gain. However, growing evidence suggests that the magnitude of awards is directly interrelated with the public's awareness of the whistleblower program and its engagement. For example, in the two-week period following the SEC's announcement in March 2018 that it had given a $83 million award in the Merrill Lynch case, traffic to SEC website surged by an estimate 300% and Google searches for the term "SEC whistleblower" tripled [24].

Furthermore, it is widely acknowledged that whistleblowers face significant personal and professional risks. As such, proponents of rewards argue that where there is great risk, there must be a reward, and if the reward is reduced, this is likely to impact the decision-making of potential whistleblowers and cause some to shy away and keep quiet. This conundrum has been addressed by Taxpayers Against Fraud who summarise the issue by saying, "nobody wins if this happens, except the perpetrator of the fraud" [25].

Large awards by their nature attract and bring forward more whistleblowers, which in turn means that more taxpayers' money can be recovered by the government. Additionally, hefty rewards attract significantly wider media coverage which is driving culture, improving attitudes to reporting fraud and other wrongdoing making society safer for everyone. Recent studies demonstrate that the number of whistleblowers from financial and professional industries increased primarily because of greater public awareness of whistleblowing and the mechanisms that are available to assist whistleblowers. Financial rewards have contributed to the destigmatisation of whistleblowers as being "snitches" and research suggests that as the US government improves whistleblowing laws and reward programmes this improves access to justice and public awareness of the importance of whistleblowing for society.

Another persistent argument against the introduction of U.S. style whistleblower reward programme is that they are simply incompatible with UK and EU culture. The March 2018 report, commissioned by the UK's Financial Conduct Authority (FCA) conducted by leading academics from universities in the UK and Ireland debunked the FCA's mistaken belief that whistleblower rewards are a uniquely American invention. The report shone a light on the history of rewarding whistleblowers noting that rewards has been part of English law for six centuries, including as recently as 1951 [27]. Further studies have reported an attitudinal shift away from the traditional trustworthiness of big corporations toward distrust. This cultural shift has generated greater appreciation for whistleblowers who expose unsavoury corporate practices and help society to hold corporations to account [28]. In her 2020 [29] paper Dr Folashade Adeyemo concludes, "The only way that reform can be effective within the regulatory regime for whistleblowing in the UK is an understanding and acceptance that in its current form, the whistleblower framework/law fails to fulfil its main aims and objectives."

The impact of these failings can be witnessed by the startlingly low successful cases in the employment Tribunal (4%) and the impact of this failure on the UK's capability to stop the criminals involved in serious organised crimes not least those involved in breaching sanctions imposed on Russia.

It is reasonable to say that the war in Ukraine has driven a reassessment of the effectiveness of the traditional measures in place to intercept corporate crime and determined that whistleblowing and the role that whistleblowers can and should be encouraged to play is incentivised. Parliamentarians across all political parties have backed Bills that introduce meaningful protections for whistleblowers, and it can only now be a matter of time before the UK introduce an Office of the Whistleblower, the first step toward a review of how whistleblowers are recompensed for their actions.

The majority of the public are completely unaware of the problems facing whistleblowers and when asked say that they believe that British whistleblowers are both protected and deservedly compensated. While the arguments put forward by a vocal minority purporting to represent the voice of the public is simply prejudice or political, but also uninformed.

The UK is neither averse nor a stranger to rewarding people who assist in the detection of fraud. Reward programmes have been run by the Competition and Markets Authority and HMRC for many years.

HMRC offers rewards of up to £100k to people who provide information that is used to bring a conviction and the CMA have just announced that they are increasing rewards to £250k [30] for those who bring forward information about cartels and other serious organised crime. We have been informed that there is room for 'reward ceiling flexibility', but overall, rewards to date fallen within the bandwidth.

Whistleblowers challenging the protections in PIDA all complain that it lacks real teeth and does little or nothing to protect those who speak out against fraud and other crimes and compliance failings. Those aware of or who have engaged in UK reward schemes described the reward ceilings at HMRC and the CMA as a 'disincentive' to take concerns forward or to the UK regulators and law enforcement as they fail to also protect the whistleblower including legal assistance. Their reasons for being reticent about these UK programmes can be summarised in the statement from the 2018 IBA report which says, "If a whistleblower prevails, relief must be sufficiently comprehensive to cover all the direct, indirect and future consequences of the reprisal (they should be 'made whole'). Otherwise, the whistleblower may 'lose by winning.'" [31]

Sympathy for the position of whistleblowers in the UK materialised in discussions with regulators who overwhelming supported reform of existing legislation and proposals for the introduction of an Office of the Whistleblower (OWB) and greater protection for whistleblowers. Some regulators volunteered their support for a rewards based programme. Compensation is dealt with in the Protection for Whistleblowing Bill it stops short of proposing a rewards programme, but it does propose for the repeal of PIDA therefore leaving scope for inclusion in later regulations that can be attached to the Protection for Whistleblowing Bill. This bill includes proposals to repeal PIDA and it foreseen that the Office of the Whistleblower would be the most appropriate body to tackle how remediation will look.

The real sticking point remains the idea of rewarding people for doing the right thing. The UK remains publicly queasy when it hears the word "reward" in the same sentence as "whistleblowing". However, when we change "reward" to "compensate" or "restitution" attitudes change. No one can dispute the importance of fairness and that whistleblowers should not suffer for doing the right thing.

We have been unable to find anyone against the concept of making a whistleblower whole, and everyone agrees that meaningful

compensation plays a real role as an incentive to bring forward information which is of enormous assistance to regulators and other forms of law enforcement. The recent announcement by the FCA who is improving its whistleblowing framework for external submissions, goes some way to demonstrating that a change of attitude is in the air. This announcement coincided with the announcement by the CFTC of the largest 'reward' ever awarded to whistleblowers.

When we dig into the debate what is clear is that onlookers are uncomfortable with size of cheque that whistleblowers are awarded by North American schemes. But the award is only the tip of the iceberg and what remains largely hidden are the eyewatering sums returned to the treasury's 70-90% of the recovery plus the fines and penalties. For example, from a recovery of 100m dollars the treasury would receive between 70 and 90m dollars. This is money that may never have recovered but for the whistleblower. In addition to the financial recovery is the apprehension of those responsible and fines and penalties. A real deterrent that has driven criminals into countries with more lax laws.

There is universal agreement that whistleblowers must be properly compensated for their real loss, to be made whole. In order to understand the issues that obscure the objective we have examined the cultural differences that can derail this discussion and concluded that while compensation goes some way toward assuaging any British sensitivities to financially rewarding whistleblowers it too has negative connotations because the word is linked to "Compensation Culture".

Having taken an in depth look at the arguments that have surfaced during the debates, including the recent Westminster Hall Debate [32] during Whistleblowing Awareness Week [33], about the repeal of PIDA and the introduction of the Office of the Whistleblower we conclude that language is the real barrier here in the UK. The solution is and always has been hiding in plain sight. The singularly most helpful description for recognising the value of whistleblowers to society is restitution. Restitution recognises the ethical and moral conduct of the whistleblower and seeks to ensure that being a whistleblower should in no way result in detriment of any proportion.

Conclusion

There can be no doubt that the UK is now an outlier in the global world of whistleblowing. It has clung to a discredited and distrusted piece of legislation that relegates whistleblowing to an employment dispute, ignoring the insider knowledge that unlocks fraud. While this has been happening the US and Canadian taxpayers have benefited from the uptake to their reward programmes, incentivising an army of whistleblowers to disclose information that has enabled large recoveries. In addition to recoveries criminal activity has been both detected and deterred.

Speaking with whistleblowers from around the world it is clear that they are not primarily incentivised by the prospect of a reward but by the enhanced protection that these programmes include and the certainty that their concerns are likely to be addressed. For the majority of whistleblowers, there is but a slim likelihood that they will receive compensation or a reward, let alone a life changing sums, but the wider benefits of the US and Canadian programmes have improved the number of disclosures (tips) being received leading to recoveries and convictions that deter crime. The broad success of the U.S. and Canadian whistleblower regimes demonstrate the role incentives play, not only in recovering government funds lost to fraud and corruption, but also in encouraging strong internal compliance efforts within and among businesses and deterring further wrongdoing.

Considering the evidence available there is an unavoidable argument for the UK to develop its own models as part of its crime prevention policy. Protecting and incentivising whistleblowers can be a credible means of helping the government root out fraud and ensure taxpayer pounds reach their intended recipients. This argument is characterised in the added significance of whistleblowers to unearthing issues related to the COVID pandemic where £7.3b, over one third of tax lost relates to temporary COVID-19 schemes according to the National Audit Office (2023 report). Conflict, global and local catastrophe create an opportunity for fraudsters who see these events as opportunities to defraud and exploit. By comparison the Department for Justice alone recovered 72billion dollars between 1987 and 2022 over 50 billion dollars is attributed to whistleblowers. Putting this into perspective just under 2billion dollars was recovered with the assistance of whistleblowers in 2022 alone, 89% of the total recovered.

Whistleblowers are the antidote they are the informed insiders vital to early interventions against serious organised crime and the DOJ demonstrate the economic efficiency of this approach.

It is impossible to overlook the examples of how and where UK whistleblowers are playing a vital role not just in the UK but across the globe in the apprehension of those responsible for economic crime and other wrongdoing. However, it is vitally important that we get our own house in order and demonstrate to whistleblowers that the UK welcomes and encourages speaking up. Kevin Hollinrake MP in his speech on 20th March 2023 described WhistleblowersUK's proposals as oven ready and then in his recent speech at the one year anniversary of the Economic Crime Manifesto said that whistleblowers must be compensated.

It is clear, after much deliberation that only a new law can address the problems that confront whistleblowers. That the law will need to recognise that it has a responsibility to ensure that not only are those organisations and individuals responsible for fraud held to account but those who are, at least partially responsible for exposing them are restored to where they would have been.

Whistleblowers in the UK are woefully under protected and their demands for root and branch change including the introduction of a system that acknowledges their contribution to the Public Interest includes recognition of their sacrifice and a system of suitable restitution introduced. In the meantime, the UK can expect to read an increasingly large number of headlines about British whistleblowers who have assisted North American governments to intercept fraud and other crime leaving the UK at a global disadvantage.

The UK is at a tipping point and must decide if it is ready to once again take the lead and put in place a gold standard whistleblowing framework that aligns the global standards. In taking this step the UK will help unleash the intelligence that whistleblowers bring and join together a global taskforce to address serious organised crime.

The Whistleblowing Bill when adopted will be instrumental in deconstructing any remaining cultural attitudes against whistleblowing and ensure that whistleblowing is defined in law as will the process addressing how whistleblowing is handled. Our Bill will also serve as a key regulatory tool for the banking and financial industries and build a stronger pillar within the corporate governance framework across every sector

protecting us all against crime and fraud, ensuring that public services receive the funding they deserve and that the UK recovers its global reputation as a country that is safe to do business with.

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WhistleblowersUK is the UK's leading not for profit whistleblowing organisation appointed secretariat to the APPG for Whistleblowing in 2018 subsequently designing and drafting the Whistleblowing Bill and amendments to key legislation. WhistleblowersUK has provided help, information and support to whistleblowers and organisations from around the world since December 2014 and leads the campaign for the introduction of a UK Independent Officer of the Whistleblower. In addition to legal support WhistleblowersUK provide a comprehensive range of assistance including mentoring, peer to peer support and individually tailored assistance including careers and other counselling. We provide advice to organisations on policy, procedure, and whistleblowing platforms.

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WB UK WhistleblowersUK

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