

Incentivising whistleblowers

What does the future hold in the UK and the US for whistleblower protection and incentivisation?

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In the UK, it has not historically been part of the fabric of our legal and regulatory system to pay whistleblowers who provide evidence to authorities who are investigating potential breaches of law or regulation. There are limited exceptions – the UK’s Competition and Markets Authority (**CMA**) offers rewards of up to £250,000 to whistleblowers who report unlawful cartel activity, and the UK HM Revenue & Customs (**HMRC**) offers discretionary amounts to whistleblowers who report tax fraud – but such awards are relatively uncommon.

The UK position sits in stark contrast to the US, where financial incentivisation of whistleblowers has been a core part of the legal system for many years, and many large and high-profile cases have been informed by evidence from whistleblowers who are remunerated for their contributions. What’s more, remuneration for whistleblowers in the US can be substantial, ranging up to 30% of the awards ultimately collected by enforcement authorities. And US enforcers’ reliance on whistleblowers is likely to increase, given historical trends and newly created incentive programs, such as the US Department of Justice (**DOJ**) pilot program for whistleblowers, launched earlier this year.

There are changes anticipated in both the UK and the US – in this piece, we highlight the indicators of change and outline what might happen next.

In the UK

The Covid-19 pandemic posed many challenges for the UK regulators, but among the silver linings they identified was a heightened opportunity, while the UK workforce was largely working from home, to receive intelligence from whistleblowers who might be privy to information they would not usually have. In October 2020, six months into the first lockdown, the Financial Conduct Authority (**FCA**) updated its whistleblowing webpage to include the following, somewhat sinister encouragements:

“If you are an employee or ex-employee who has witnessed wrongdoing at work, you can tell us your concerns with confidence. You may also want to report wrongdoing that you are aware of because of a personal relationship with someone – for example, your partner may be an employee in a financial services firm witnessing wrongdoing. It could also be that you wish to report a family member or neighbour and, in these cases, you may also want to speak to us confidentially.”

Soon afterwards, in March 2021, the FCA launched its “[In Confidence, With Confidence](#)” campaign, again with a view to encouraging financial services employees to bring their concerns directly to the FCA.

An [FCA survey published in May 2023](#), following a 2022 survey examining the effectiveness of the FCA whistleblowing hotline, stated that a third of whistleblower reports received by the FCA via their hotline resulted in regulatory action of some kind – an indication that this is a valuable source of supervisory intelligence for the FCA. The most recent FCA-published statistics on the use of its whistleblower hotline (September 2024) revealed that use of the hotline continues to increase.

However, the Treasury Select Committee, in its March 2024 report on “[Sexism in the City](#)”, concluded that the FCA’s whistleblower hotline was not well understood and recommended that the FCA renew its efforts to publicise its whistleblower processes. The FCA has duly been writing to various industry bodies, asking them to remind their members about the FCA’s whistleblowing processes and web pages. FCA co-Director of Enforcement, Steve Smart, also [issued a personal plea in a speech](#) on 26 June 2024: *“the intelligence we receive from whistleblowers is a crucial element of our intelligence picture... we implore anyone with any concerns to contact us whether by phone, email or webform.”*

Separately in October 2023, the Department for Business and Trade launched a review of the legal regime that supports workers who blow the whistle on wrongdoing in the workplace. The aims of the review were to examine the effectiveness of the whistleblowing framework in meeting its original objectives of facilitating whistleblowing, protecting whistleblowers against detriment and dismissal, and facilitating wider cultural change around whistleblowing. While the research phase was expected to conclude by the end of 2023, no findings have been published.

Earlier this year, the government introduced the Protection for Whistleblowing Bill aimed at strengthening the legal protections enjoyed by whistleblowers in the UK; this was dropped after the general election was called and Parliament was dissolved.

Since the change of government in the UK, there has been no change of tone in regard to the importance of encouraging individuals to come forward with concerns they have about the organisations that they work for, especially where those concerns relate to culture, diversity and inclusion. The Labour Party manifesto promised that Labour would launch a new whistleblower reward scheme. While the King’s Speech setting out Labour’s legislative agenda did not mention such a scheme, it is something that the new Director of the UK Serious Fraud Office (**SFO**), Nick Ephgrave, has separately been considering. In a [speech at the Royal United Services Institute](#) delivered on 13 February 2024, Mr Ephgrave spoke in favour of introducing financial incentives for whistleblowers in criminal cases: *“I think we should pay whistleblowers... This is not just about the SFO. I would invite us to think about whether or not we want to consider incentivising whistleblowers. It has many benefits... the incentivisation of witnesses and better use of the assisting offenders legislation, and we have the building blocks for a much quicker and more efficient way of dealing with big cases.”*

In his remarks, Ephgrave cited the success of the US Securities and Exchange Commission Whistleblower Program which provides monetary awards to eligible securities fraud whistleblowers whose information leads to successful enforcement actions. He asserted that 86% of the \$2.2 billion in civil settlements and judgments recovered by the US Department of Justice were based on whistleblower information and since 2012, over 700 UK nationals have engaged with US law enforcement as whistleblowers. In September 2024 in a [speech to the Cambridge International Symposium](#), Freya Grimwood (Chief Capability Officer at the SFO) picked up on this theme, saying *“we want to make better use of whistleblowers, and we think a critical part of this is incentivising them to come forward.”*

Incentivising whistleblowers also features in the [SFO's 5-year strategy for 2024-2029](#) against the backdrop of the SFO's desire to "*find way to obtain evidence more quickly and build compelling cases in shorter timescales*".

In a similar vein, the co-Directors of Enforcement at the FCA, who are also relatively new in post, are actively looking for ways to make FCA enforcement investigations shorter and more efficient. They stated in the recent, controversial consultation on changes to the FCA policy on enforcement publicity that they would like more whistleblowers to come forward to assist their enforcement investigations. The FCA will be watching the SFO's position on this issue very closely. While there is undoubtedly a different analysis to be performed regarding the use of whistleblower incentives for civil/regulatory cases versus criminal cases, our sense is that the FCA is keen to explore bold steps in order to secure more significant regulatory outcomes at the cost of less time and resources.

In the US

Enforcement authorities in the US have long relied on whistleblowers to build and prosecute cases, both civil and criminal. Whistleblower-initiated cases frequently result in successful outcomes, and US enforcers often use whistleblowers to provide an "insider's view" of the alleged scheme or conspiracy under scrutiny. Financial incentives for reporters are a tried-and-true feature of many successful whistleblower programs.

For instance, the Securities and Exchange Commission (**SEC**) has a whistleblower program that provides substantial financial awards to individuals who provide timely and credible information about federal securities law violations, ranging from 10% to 30% of the sums collected in an enforcement action. According to the SEC's annual report to the US Congress for Fiscal Year 2023, it "*awarded nearly \$600 million—the highest annual total by dollar value in the Program's history—to 68 individual whistleblowers,*" including a record-shattering "*single award for almost \$279 million.*" Since the whistleblower program's inception in 2011, [the SEC reports](#) that it "*has now awarded more than \$1.9 billion to 397 individual whistleblowers.*"

Similarly, the US federal False Claims Act—a statute originally enacted during the US Civil War and amended in 1986 to provide significant whistleblower incentives—allows individuals to file "qui tam" lawsuits alleging false claims on behalf of the federal government, and to recover a share of the government's ultimate award. Typically, whistleblowers (known as "relators" in this context) will file lawsuits, alleging fraud, waste, or abuse involving the use (or misuse) of federal funds. The federal government, upon review of those allegations, may elect to intervene in a False Claims Act lawsuit. And if the qui tam action is successful, the relator typically receives a portion of the recovery ranging between 15% and 30%.

Lastly, as of 2024, the DOJ's Criminal Division has launched its own pilot program for whistleblowers who report corporate fraud. Under this program, which [BCLP has summarised separately](#), a whistleblower may earn up to 30% of the first \$100 million in forfeited assets plus another 5% of the next \$400 million.

Incentive programs like these have created an entire industry of "whistleblower lawyers" in the US, who represent individuals seeking to cash in under various whistleblower programs, by reporting alleged wrongdoing to enforcement authorities. According to the SEC, in Fiscal Year 2023, it received "*more than 18,000 whistleblower tips, ... almost 50% more than the previous record set*" in Fiscal Year 2022 ([Annual](#)

[Report 2023](#)). Further, in Fiscal Year 2023, whistleblowers filed 712 qui tam suits under the False Claims Act, and [the DOJ reported](#) settlements and judgments exceeding \$2.3 billion in these and earlier-filed suits. It remains to be seen what transpires with the DOJ's new pilot program. But if the SEC's and False Claims Act's whistleblower incentives offer a guide, the DOJ's pilot program will most likely herald a predictable uptick in reports of alleged corporate wrongdoing, with more criminal enforcement actions to follow in their wake.

Conclusion

Whilst the idea of introducing an incentivisation scheme for whistleblowers in the UK is not new, it feels as though the conditions may now be in place for a change of policy in the UK towards the US model. It is likely that any changes in the UK will be applied first in the criminal law sphere. We anticipate that should the SFO adopt a whistleblower incentivisation programme that demonstrably improves the efficiency of its prosecution work, the FCA may then follow.

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