

UK Whistleblower Reform is Crucial for Global Anti-Corruption Enforcement

British whistleblowers have relied on transnational whistleblower laws in the US to report corruption since the passage of the Dodd-Frank Act in 2010. However, changes to US anti-corruption policies and agency powers under the current administration, which threaten the enforcement of these laws, may leave British and other international whistleblowers with no safe, effective reporting mechanism.

The UK is well suited to fill this potential global anti-corruption enforcement void by implementing long overdue changes to its whistleblowing framework. The UK's announcement of a new tax whistleblower reward scheme, modeled off of US whistleblower award programs, is a positive sign. However, further action to create a whistleblower program in the UK's Serious Fraud Office (SFO), modelled on the Dodd-Frank Act programs, is still needed.

The State of Whistleblowing in the UK

The whistleblowing regime in the United Kingdom is currently governed by the 1998 Public Interest Disclosure Act (PIDA), which allows whistleblowers to sue for damages if they are retaliated against. However, it fails to incentivize whistleblowing, fails to adequately protect whistleblowers, and fails to include an enforcement mechanism through which to respond to whistleblower tips about corruption and fraud. PIDA conceives of whistleblowing as an employment law issue rather than a white-collar crime enforcement issue, and therefore it is ill-equipped to support whistleblowers who sound the alarm on grand corruption.

PIDA's flaws were highlighted recently through the retaliation against whistleblower Hazar Denli. While working as an engineer designing electric cars at Tata Technologies, Denli noticed dangerous engineering issues with the vehicles. When his internal reports were not escalated, Denli published a post on Reddit. He was then fired by Jaguar Land Rover, another Tata Group company, and blacklisted from industry recruitment.

PIDA offers nothing to a whistleblower until they find themselves in a situation like Denli's, where they have already lost everything. It then creates a herculean task for whistleblowers – to obtain damages, they must pay out of pocket for an attorney who can prove that they were deliberately retaliated against for blowing the whistle. Corporations, represented by the best attorneys that money can pay, elongate these cases for years, driving whistleblowers into debt. Meanwhile, the focus of these cases shifts to the retaliation suffered by the whistleblower rather than wrongdoing of the company, which remains uninvestigated. This also inevitably leads to attacks against the character of the whistleblower rather than maintaining a focus on the substance of their information. This not only puts whistleblowers in a vulnerable position but poses a massive risk to the public. This leaves no accountability for problems impacting public safety, stock market stability, or consumer prices.

For this reason, Denli became one of over 700 UK whistleblowers since 2012 to file a claim under transnational US whistleblower laws, understanding that these laws offered better enforcement prospects than the UK whistleblower regime. Under the US Dodd-Frank Act, whistleblowers can report anonymously to the US Securities and Exchange Commission, which treats their information as a source of intelligence for market regulation and white-collar crime enforcement. If a whistleblower's tip results in a company being sanctioned over a million dollars, the whistleblower can receive 10-30% of the sanction as a monetary reward.

Calls for Reform in the UK

Anti-corruption leaders in the UK are increasingly calling for a law modeled on US's successful Dodd-Frank Act whistleblower provisions. In February of 2024, director of the UK's Serious Fraud Office (SFO), Nicholas Ephgrave, announced his support for a whistleblower rewards scheme in the UK. Since then, he has continued advocating for a reward program, citing the United States' whistleblower laws as the example to follow.

In December, 2024, the Royal United Services Institute (RUSI) published a report by Eliza Lockhart, whichexplains that whistleblower rewards are empirically proven to strengthen the fight against financial crime. The report dispels common myths about whistleblower rewards and provides a set of recommendations to guide policy debates around how to best implement a reward scheme in the UK.

Lockhart found that "[rewards] represent a profound change in the concept of whistleblowing, from an altruistic act of a moralistic

individual to the provision of an intelligence service, and like any service, the provider, in this case, the whistleblower gets paid on the basis of the value of that service." She explained that it is unrealistic to expect corporate insiders to risk high salaries and careers in the financial sector to report without the financial safety net of a reward and the assurance that substantive tips will trigger an investigation.

Lockhart's research corroborates existing literature on the behavioral economics of whistleblower rewards, which suggests that the majority of potential whistleblowers are rational economic actors who will make a rational economic decision about whether or not to disclose. Data from US whistleblower programs demonstrates how rewards have flipped the risk dynamic inherent in disclosing, making whistleblowing a rational decision, whereas it was previously irrational. The resulting increase in tips have made US anti-corruption enforcement efforts more successful and efficient.

However, with shifting enforcement priorities for US regulators, as indicated by the Trump administration's pause on Foreign Corrupt Practices Act (FCPA) enforcement, the UK can serve as a counterbalance for international anti-corruption enforcement. With a functioning whistleblower program, the UK will be able to step up as another location for whistleblowers to turn to.

Recent and Future Advances in UK Whistleblower Programs

The UK has now taken its first steps towards creating an effective system for whistleblowers. On March 11, the United Kingdom's HM Revenues & Customs (HMRC) announced that it would be instituting a whistleblower rewards system modeled off of the US's Internal Revenue System (IRS) Whistleblower Program. While the HMRC has paid out rewards before, they have never had a policy mandating consistent payments for information on fraud. This shift indicates that agency leaders in the UK recognize that whistleblowers are an effective asset in combating fraud and incentivizing them with monetary rewards is an effective investment for anti-fraud efforts.

Despite the actions of the agency leaders in HMRC and vocal support from the director of the SFO, UK legislators have yet to act to expand effective whistleblower legislation. With the support of WhistleblowersUK, one bill has been introduced in Parliament that would create an Office of the Whistleblower, replacing the framework of the PIDA. The bill would shift jurisdiction for whistleblower claims away from infamous Employment Tribunals—where whistleblowers have won less than 10% of cases—to a distinct office with authority to investigate the tip. Although the bill does not include a provision on rewards, it could be a significant first step in establishing the infrastructure for a whistleblower system with enforcement capabilities.

Conclusion

The conversation on whistleblower reform in the UK has picked up steam in recent years as people realize that tragedies like the Post Office scandal or electric car crashes could have been prevented with an effective anti-corruption law that treats whistleblowers as a vital resource. In the wake of the publication of the RUSI report, it is evident that a whistleblower reward program is necessary for agencies like the Serious Fraud Office to maximize their white-collar crime enforcement efforts. Since the establishment of the Dodd-Frank whistleblower programs, the United States has filled a critical role in global anti-corruption enforcement efforts. Now that US plans to lead anti-corruption efforts are ambiguous, UK whistleblower reforms have become more urgent than ever. British policy makers should act swiftly to implement an effective system of whistleblower rewards programs in light of this precarity.

Fuente: https://blogs.law.ox.ac.uk/

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