

# Compensating Whistleblowers

March 2022

The issue of compensation and rewards remains a contentious one, dominated in the UK by the opinion that whistleblowers do not support rewards. The Government's Anti-corruption champion, John Penrose MP, raised his concerns on the 24th February stating "I'd be worried about creating a moral hazard if [whistleblowers] got a personal reward incentive".

However, it remains the case under existing legislation that the only redress for whistleblowers is reinstatement and compensation via the courts or settlement agreements that are usually subject to substantial NDA's. The Government agree, with the Department for Business, Energy, and Industrial strategy concluding that "using these clauses to silence and intimidate victims of harassment and discrimination cannot be tolerated" in their response to the Government consultation on confidentiality clauses.

In the period 2015-2021 of the 682,000 cases that went to at least one preliminary hearing in the employment tribunal only 12% of cases that combined discrimination and whistleblowing claims succeeded. Cases brought solely on whistleblowing fared less well with 4% succeeding.

The average amount of compensation awarded in this period was £28,500. The cost of bringing the claim often exceeds this with a typical whistleblowing-related unfair dismissal tribunal costing the claimant £40,000 or more.

Fraud and money laundering is estimated to lose the UK Government between £30 - £50 billion per year and rising, including as a result of Covid. The cost to organisations and individuals to other forms of wrongdoing is unknown and we can only estimate the spend on settlement agreements relating to allegations of harassment, victimisation and bullying in the workplace. The NHS are believed to have spent £4.6 million in 2018-21 alone.

The treasury is seeking to address the £15.7 billion black hole arising from Covid. Covid related fraud is estimated to be in excess of £10 billion between the Bounce Back Loan Scheme and Furlough.

The Public Interest Disclosure Act fails to address the only reason that whistleblowers find themselves in litigation – the allegations of wrongdoing. The legislation effectively assists organisations by turning the spotlight onto a legal action about a contractual dispute between an employer and worker. This flaw has resulted in more than a generation of disgruntled whistleblowers who have been deemed vexatious by both the courts and regulators.

**Example 1. Jayne Senior, a local authority youth worker.**

From 1999 - 2012 she repeatedly blew the whistle on the Rotherham grooming gangs to her employer, the local authority and the police. She lost her job but persisted in raising her concerns. From 2012 onwards was repeatedly warned by the police that if she persisted to make allegations relating the sexual abuse and exploitation of children she would be arrested on public order grounds for vexatious behaviour.

Her protected disclosures have now resulted in over 400 years of prison sentences to perpetrators of heinous crimes against thousands of children. Even in the very first media reports, "A culture of silence" was identified as the main failing in Rotherham. One of those convicted is Lord Ahmed who denied Jayne's allegations, but was convicted in 2022 with Mr Justice Lavender who said Lord Ahmed's actions had had "profound and lifelong effects" on the victims.



The first of many police officers will face a disciplinary hearing for failing to record or act on the allegations and witness statements from 28th February 2022.

In 2016 Jayne was awarded an MBE by the Queen.

Defending herself against the constant onslaught of malicious allegations has cost her over £75,000 and the risk to her safety was deemed so great that her home has been fully alarmed and monitored by the police. In addition, she has to carry a police monitored personal alarm. She has never been compensated for her losses and was unaware of PIDA at the time of her dismissal. The system has failed her.

At the end of March 2022 Jayne will finally be able to share police reports upholding her complaints about over 40 senior policers from the command team who have been found to have failed in their duty to protect the public. However, despite this finding none of these officers will face any disciplinary action, some now hold very senior positions. Although this would appear to be a historic outcome Jayne is left feeling vulnerable, unprotected and concerned that the pace and outcome of this shameful investigation will deter other whistleblowers from coming forward.

What is clear from Office of National Statistics data, which estimates over 200 thousand CSE cases in the UK in the year ending March 2019, is that we need more whistleblowers like Jayne to help uncover every single one of these offenders.

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While US laws to protect Federal Employees – our public sector – remain weak, those pertaining to the private sector and the interception of fraud against the US government are robust and proactive. They encourage every citizen to call out concerns and offer incentives in the form of financial rewards and protection against backlash.

Whistleblowing legislation resulted in the recovery of over \$500 million in taxes due to the US Government in 2021. A further \$26.3 billion recovery came about because of the actions of six whistleblowers. This is in addition to having successfully recovered an estimated \$500 million to defrauded private investors since the introduction of the Dodd Frank Act in 2010. Fines associated with these recoveries amount to over \$2.5 billion.

Since the introduction of Dodd Frank the US has gradually introduced a number of laws including the Whistleblower Protection Enhancement Act (2012) and the Whistleblower Protection Reform Act (2019). In October 2021 the Silence No More Bill was passed to address NDA's and sexual harassment.

In 2021 the SEC broke multiple records, including the largest single whistleblower reward to date and the largest number of individuals rewarded in a fiscal year, continuing on their trend of consistent growth in disclosures received, assets recovered, and rewards dispensed. It demonstrates that offering rewards can encourage whistleblowers to come forward and assist in unravelling these often complex and technical acts of wrongdoing.

In conclusion, whistleblowers are the vital element of a transparent society. Exposing wrongdoing which would otherwise remain buried. Ethically speaking it is immoral to allow the current system that traumatises those who speak up. Courage should not be a prerequisite to speaking up.

Every whistleblower represents an opportunity to prevent harm and crimes.

In truth few whistleblowers are motivated to come forward by financial rewards, however almost every whistleblower becomes dependent on compensation because of the catastrophic impact on their lives and those around them. We know from other countries including the US that access to protection against retaliation and meaningful compensation incentivises people to come forward.

By accepting this premise it becomes obvious that properly compensating whistleblowers is the right path to take when combined with comprehensive protection against retaliation. A combination of new measures, taking into account international best practice is unlikely to inspire bounty hunters but it will make society safer and increase the tax that goes into the treasury. By offering a credible and attractive alternative to turning the other way we create the necessary 'lightning rod' for reporting potential misconduct.

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### Example 2. Anonymous SEC Whistleblowers

In 2021 the SEC, along with another unidentified US Agency, opened an investigation into a publicly traded company in the US. This action was started by a whistleblower providing extensive analysis of publicly available information, a potential witness list, and proceeded to give extensive subsequent aid to the investigation.

For their actions, both whistleblowers were rewarded. The initial whistleblower received \$110 million for their initial and continued aid to the investigation, with the second whistleblower receiving \$4 million. Both have remained anonymous and unidentified throughout the investigation which will hopefully give confidence to those considering whistleblowing but fear suffering detriment.

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