

## Whistleblowing/Speaking Up/Raising Concerns in the UK

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### What's this all about?

This article briefly looks at whistleblowing issues in the UK.

### The legal background

In sum, in the UK workers are protected against retaliatory dismissal or detrimental treatment if they make a so-called “protected disclosure” to their employer or to some other prescribed person. This has to be a disclosure of information which a worker reasonably believes is made in the public interest that indicates certain types of wrongdoing. The relevant UK legislation is the Employment Rights Act 1996 (mainly Pt IVA, sections 43A to 43L – see here <https://www.legislation.gov.uk/ukpga/1996/18/part/IVA>) and the Public Interest Disclosure Act 1998 (see here <https://www.legislation.gov.uk/ukpga/1998/23/contents>).

Claims for ill-treatment as a result of whistleblowing are dealt with by employment tribunals – there are three types of possible claim, as follows:

1. Claims for whistleblowing unfair dismissal, which may be brought only by employees;
2. Claims for whistleblowing detriment by an employer, which may be brought by any worker; and,
3. Claims for whistleblowing detriment by a co-worker or an agent of the employer, which may be brought by any worker.

Various remedies exist, depending on the type of claim, including the award of compensation.

The UK government has also issued the “Government Whistleblowing: Guidance for Employers and Code of Practice” (“the Code” – see here <https://www.gov.uk/government/publications/whistleblowing-guidance-and-code-of-practice-for-employers>) which offers support and advice to employers who may need to handle whistleblowing reports; the Code has no statutory force. There have been moves to update the Code but these seem to have stalled for now.

The kinds of malpractice typically included in an organization’s UK whistleblowing policy include:

- Criminal offences (usually except bribery and corruption & tax evasion facilitation which tend to be reported using procedures specific to these areas);
- Miscarriages of justice;
- Danger to the health and safety of any individual;
- Damage to the environment; and,
- Breach of any legal or professional obligations.

An organization will typically have an internal whistleblowing team and internal procedures to follow when an individual raises concerns, which may include whistleblowing hotlines. Whistleblowing in an organization raises data protection/GDPR issues (for more see “Does whistleblowing present any data protection issues?” in our EU Whistleblowing FAQs which can be found here <https://www.corderycompliance.com/eu-whistleblowing-faqs/>) – there is also some background to GDPR here [www.bit.ly/gdprfaq](http://www.bit.ly/gdprfaq).

In the UK the competition/antitrust regulator, the Competition and Markets Authority (the CMA), offers financial rewards of up to £100,000 (currently around USD\$142,000 & €117,000) entirely at the CMA’s discretion and in exceptional circumstances for “inside” information about the existence of a cartel (for more see the CMA’s “Informant Rewards Policy” here <https://www.gov.uk/government/publications/cartels-informant-rewards-policy>).

In the area of financial services there are also special whistleblowing requirements that apply to certain types of businesses (UK deposit-takers with assets of £250m or greater, Prudential Regulation Authority designated

investment firms, insurance and reinsurance firms within the scope of so-called Solvency II, & the Society of Lloyd's and managing agents) under rules set out by the financial regulators the Financial Conduct Authority and the Prudential Regulation Authority – for more about these particular UK regimes see in particular here <https://www.fca.org.uk/publication/policy/ps-15-24.pdf> and here <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/policy-statement/2015/ps2415>.

Over the years there has been a steady growth in the field of modern slavery/ESG/supply chain due diligence and compliance (such as under the UK Modern Slavery Act 2015 disclosure and transparency requirements) – many organizations cater for these issues through their whistleblowing hotlines.

### **What about the EU whistleblowing rules?**

In 2019 the EU issued whistleblowing rules concerning infringements of some areas of EU law, which EU countries must implement into their national law by 17 December 2021. There is more on that in our FAQs here <http://bit.ly/euwhistle2>. Following Brexit the UK will not be implementing the EU whistleblowing rules (but see below).

### **What about reforms of the UK whistleblowing rules?**

In 2019 the UK All Party Parliamentary Group for Whistleblowing (see here <https://www.appgwhistleblowing.co.uk/>) set out recommendations for change to the UK whistleblowing legal framework in a report entitled “Whistleblowing – The Personal Cost of Doing the Right Thing and the Cost to Society of Ignoring it” (see here <https://www.appgwhistleblowing.co.uk/news>). Eventually draft legislation was put to the UK Parliament (see here <https://bills.parliament.uk/bills/2630>) which proposed a number of key changes including setting up an independent body to protect whistleblowers and introducing a ban on non-disclosure agreements that try to gag whistle-blowers. But, in 2020 it failed to complete its passage through Parliament and could not progress further (see here <https://bills.parliament.uk/bills/2630/news>). Other draft legislation was also put to the UK Parliament (see here <https://bills.parliament.uk/bills/2589>) which proposed setting up a so-called Office of the Whistleblower, a kind of whistleblower czar with various powers to facilitate whistleblowing and provide financial redress to individuals harmed by whistleblowing, but in 2020 this too failed to progress through Parliament (see here <https://bills.parliament.uk/bills/2589/news>). It remains to be seen whether Members of Parliament choose to reinvigorate draft whistleblowing legislation, including through the Private Members Bills process. For its part, in 2021 the well-known UK whistleblowing charity, Protect (see here <https://protect-advice.org.uk/>), launched a “Let’s fix UK whistleblowing law” campaign to update the UK whistleblowing legal framework (see here <https://protect-advice.org.uk/protect-campaign-help-fix-uk-whistleblowing-law/>). Finally, although the UK has left the EU and won’t be implementing the EU whistleblowing rules, the post-Brexit EU-UK Trade and Co-operation Agreement requires the UK to maintain level playing fields with EU rules including with regard to EU levels of employment protection, so it may be that if UK whistleblowing legal reforms are revived certain aspects of the EU whistleblowing rules might still make their way into UK whistleblowing law.

### **Key takeaways**

Organizations should consider doing the following:

1. Review their whistleblowing policy, internal procedures and training materials;
2. Make sure that their procedures take into account current whistleblowing issues – for example in the pandemic anecdotally at least there seems to have been a rise in malicious and more trivial complaints (see <https://www.corderycompliance.com/client-alert-returning-to-work-during-coronavirus-health-testing-and-data-protection/>). It is important to make sure procedures are fit for purpose;
3. Ensure that everything that they do concerning whistleblowing complies with data protection/GDPR requirements – probably the best way to do this is by undertaking a Data Protection Impact Assessment;
4. Make sure they have a process to enable them to act promptly if they receive a whistleblower report. Our experience is that whistleblowers expect a prompt response and may take their concerns elsewhere if they do not feel that they are being listened to.

## Further Information

Our FAQs and film about the EU whistleblowing regime can be found here <https://www.corderycompliance.com/eu-whistleblowing-faqs/>.

We write about modern slavery/ESG/supply chain due diligence and compliance issues here <https://www.corderycompliance.com/category/modern-slavery-supply-chain-management/>.

We write about privacy/data protection issues here <https://www.corderycompliance.com/category/data-protection-privacy/>.

We write about anti-bribery and corruption here <https://www.corderycompliance.com/category/bribery-corruption/>.

We have written about the UK criminal offence of failure to prevent the facilitation of tax evasion here <https://www.corderycompliance.com/failure-to-prevent-tax-evasion/>.

For more information please contact André Bywater or Jonathan Armstrong who are lawyers with Cordery in London where their focus is on compliance issues.

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