

Pay-day proposal for UK whistleblowers

Are radical plans to introduce US-style reward scheme for blowing the whistle a good idea?

The Home Office has recently closed the consultation period on its Asset Recovery Action Plan, which is attempting to increase the recovery of proceeds of crime.

One of the proposals is a radically different approach to whistleblowing, whereby individuals are financially rewarded for blowing the whistle on their employers. This would be based on the model of the ‘quit am’ scheme (whereby a lawsuit is brought on behalf of the federal or state government), which is followed in the US under the False Claims Act (FCA). But should the UK abandon its current, more altruistic model in favour of a regime where the worker receives a financial reward?

Misgivings

The results of the consultation are expected to be published any day now, but misgivings have already been aired, in particular by Public Concern at Work (PCaW), the whistleblowing charity.

The thrust of PCaW’s objection is that to introduce a reward scheme of the kind that is being considered by the Home Office would weaken the effectiveness of the existing whistleblower regime in the UK.

The UK already has one of the most sophisticated and comprehensive schemes in the world for protecting whistleblowers against victimisation (including dismissal) by their employers through the mechanism of the Public Interest Disclosure Act 1998. Many US employees also have similar protections that have been legislated for on a sector-by-sector or state basis, but there is no unified system such as the one we have in the UK.

One of the central features of the UK system of protection is the requirement that the worker makes the disclosure “in good faith”. The meaning of this term has been the subject of debate, and the judgments of the *Court of Appeal in Street v Derbyshire Unemployed Workers Centre* leave several questions unresolved.

However, it would seem to be the case that if the gaining of some personal advantage (and surely obtaining a quit am reward would be such an advantage) is the main motive for the disclosure, then the whistleblower is at risk of a finding that they did not act “in good faith”, thus depriving them of the protection given by the Act. It is difficult to see how these two systems could comfortably co-exist.

In the US, the FCA gives power to anyone who becomes aware of information that is not already in the public domain, and shows that the US government has been or is being defrauded, to sue the perpetrator on behalf of the government. The government can then intervene by taking over the case. If the claim is successful, the individual who started the claim receives a share of the proceeds – typically between 15-20%. If the government does not take over the claim, the individual gets a higher share (25-30%) and the balance then goes to the government.

Encouraged

The US Department of Justice reported last year that \$20bn (£10bn) had been recovered by such actions since 1986. This success has encouraged the Home Office to suggest the introduction of such a scheme in the UK, and presumably here it would not be confined to the recovery of government assets.

Abandoning the current altruistic model, which encourages whistleblowing through a promise of protection, in favour of a regime where the worker receives a financial reward, would indeed be a radical step. It would, by definition, require a comprehensive overhaul of a statutory framework built on the “good faith” principle.

Whether this would also result in employers escaping liability for detrimental treatment or dismissals of staff for whistleblowing is doubtful, but unclear. The publication of the responses to the consultation will certainly make interesting reading.

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