

## **Protect's Economic Crime (Transparency and Enforcement) Bill 2022 Briefing**

This is a short briefing outlining the key whistleblowing issues connected to the new **Economic Crime (Transparency and Enforcement) Bill** from Protect.

### **Who is Protect**

Protect is a UK based whistleblowing NGO that since 1993 provides confidential legal advice to whistleblowers, we advise around 3000 cases a year from all different sectors and industries. We have been part of a group of lawyers, journalists and NGOs who successfully campaigned for the release of anti-corruption [whistleblower Jonathan Taylor](#).

### **A: INTRODUCTION**

1. Economic crime costs the [UK economy £290 billion annually according to a conservative estimate from the National Crime Agency](#). This is equal to 14.5% of GDP. However, [analysis from Spotlight on Corruption has found that the UK government spends the equivalent of just 0.042% of GDP \(£852 million\) a year on fighting economic crime](#).
2. In the [Treasury Committee Report on Economic Crime earlier](#) this year, it was concluded that there is no 'silver bullet' solution to the alarming rate in which fraud and economic crime having risen; proposing that government must work across departments, regulatory bodies and enforcement agencies to address all aspects of the problem.
3. Regulators recognise the importance that whistleblowers have in providing key intelligence to help detect or investigate economic crime.
  - a. *"Whistleblowing reports are a vital source of our information. They give us unique insight into the sectors and firms we regulate, helping us to do our job and protect consumers. We assess every report we receive and use them to take action, or to help inform our supervisory and enforcement strategies for both sectors and firms."* – [Financial Conduct Authority, Annual Reports and Accounts \(2021/21\)](#)
  - b. *"Whistleblowers continue to provide a vital source of information to the SFO in the fight against economic crime."* – [Serious Fraud Office, Annual Report on Whistleblowing Disclosures 2020-21](#)
4. For whistleblowing to work effectively, there must be effective and well-resourced external routes to raise concerns. Often whistleblowers may not feel able to raise their concerns internally; they may fear lack of action or retaliation, or they may have already raised their concerns with their employer and no action has been taken. This is why, external regulators – and specifically those prescribed under the Prescribed Persons Order 2014 to hear whistleblowing concerns – are so important.
5. Despite their vital role, many of these external regulatory agencies have suffered real-term cuts. [The National Crime Agency's \(NCA\) budget decreased by 4.2% in real terms from 2016-2021 and the Crown Prosecution Service \(CPS\) saw a 33% real term cut from 2010-2019. Only the Serious Fraud Office saw a small budget increase of around 1.1% per year since](#)

[2016. This lack of investment is likely to have contributed to a 35% drop in overall prosecutions for money laundering since 2016.](#) Similarly, research from [Chatham House](#) found that the anti-corruption laws in the UK were undermined by the National Crime Agency's lack of resources in which only 118 employees to scrutinise thousands of [suspicious activity reports \(SARs\)](#). Our concern is that without effective enforcement whistleblowing is seriously undermined.

## **B: OUR RECOMMENDATIONS**

### **I. STANDARDS ON REGULATORS**

6. Currently, there are no standards on regulators when dealing with whistleblowing concerns. Only those regulators who are prescribed by UK whistleblowing law to hear whistleblowing concerns, under the Prescribed Persons Order 2014, have a duty to publish an anonymised annual report on whistleblowing disclosures made to them.
7. Our European partners have raised the bar for international best practice by placing obligations on regulators when it comes to their whistleblowing arrangements, resulting in the UK falling behind. We propose that standards should be imposed on regulators when handling concerns brought to them by whistleblowers and when investigating the concerns themselves. Specifically, we recommend that duties are placed on regulators investigating fraud and economic crime to have necessary channels and processes in place for whistleblowers to report their concerns. Regulators must be under a duty to appropriately investigate concerns about economic crime that are within their remit and, for those concerns that are not within their remit, regulators must pass onto the appropriate body.
8. The current regulatory landscape for reporting concerns of fraud and economic crime is overly complex with several different regulators operating in the same area. In its report, the [Treasury Committee stated that the number of agencies responsible for fighting economic crime and fraud is 'bewildering'](#). Consequently, clearer guidance needs to be given as to which regulator is appropriate to report concerns to, particularly for any new or reformed legal obligations introduced in the **Economic Crime (Transparency and Enforcement) Bill 2022** such as those around unexplained wealth orders and registers of overseas entities.
9. The government could consider a central reporting place, like the [single law enforcement agency suggested by the Treasury Committee](#), where individuals can report complex concerns of economic crime to ensure that no concern is misreported, and all concerns are appropriately investigated and acted upon by the responsible regulator. If this is not possible, clear guidance should be given to all regulators operating in economic crime as to where to pass concerns that fall outside of their remit.
10. In addition to this, regulators who investigate economic crime who are not already prescribed under the Prescribed Persons Order 2014 should become prescribed under whistleblowing law.<sup>1</sup> These changes would mean whistleblowers would have an easier path to getting legal protection, and anonymised data on the number of whistleblowers, the types of concerns and a summary of action taken by the Prescribed Person published each year. This includes – but may not be limited to – Companies House. Similarly, professional regulators of those professions who may enable fraud and economic crime should also be prescribed under UK whistleblowing law, including – but may not be limited to – Solicitors

---

<sup>1</sup> 43F of the Public Interest Disclosure Act 1998

Regulation Authority, Law Society, the Office for Professional Body Anti-Money Laundering Supervision etc.

11. Too often, whistleblowers in the UK who act as a vital source of information for regulators have been left unsupported by the regulators they approach. The experience of the whistleblower Jonathan Taylor illustrates this point. Jonathan Taylor is a UK whistleblower who during the course of his employment as a lawyer for the Dutch listed oil industry firm SBM Offshore N.V., with its main office in the Principality of Monaco, uncovered one of the largest corruption and bribery scandals in the world that resulted in criminal investigations in the United Kingdom, United States of America, Netherlands, Switzerland and Brazil. His evidence contributed to the company paying fines amounting to over \$US800 million and, to date, the imprisonment of three individuals directly involved in the scandal due to information he provided to the SFO, including the former CEO of SBM Offshore N.V.
12. On 30 July 2020, over eight years *after* blowing the whistle on corruption, Mr Taylor travelled to Dubrovnik, Republic of Croatia for a family holiday. He was arrested at the airport as a result of a Red Notice issued by Monaco which originally stated to be allegations of bribery and corruption. However, this was then altered to wanting to question Mr Taylor despite legal experts stating quite clearly that this was against the use of extradition laws. Mr Taylor's lawyers were also concerned that Monaco's actions represented a breach of the extradition law process, and the extradition was a breach of his human rights in that he would be unable to receive a fair trial given the high-profile corruption activities Mr Taylor has highlighted. [Mr Taylor spent a year in Croatia fighting the extradition process, where the extradition request was rejected by the Croatian Justice Minister.](#) In October, [Mr Taylor voluntarily went to Monaco to be questioned, and is applying for the investigation to be dropped.](#)
13. During the extradition process the SFO, National Crime Agency and the British Government were unwilling to offer any assistance to Mr Taylor in his legal fight, in fact this was left to civil society to campaign and push for Jonathan's release

## II. STANDARDS ON EMPLOYERS

14. If an offence of a failure to prevent economic crime is introduced into the **Economic Crime (Transparency and Enforcement) Bill 2022 Briefing**, any defence should incorporate considerations of the whistleblowing arrangements that an organisation had in place.
15. Whistleblowing and a good speak up culture play vital roles in detection and prevention of wrongdoing, risk and malpractice at an early stage. Studies have shown the value of whistleblowing in dealing with issues like economic crime. According to research from the [Association of Certified Fraud Examiners in 2020, 43% of fraudulent schemes were detected via a tip, of which at least 50% are known to have come from whistleblowers.](#) Any offence to prevent corruption should hold to account reckless employers that do not take the risk of corruption seriously, while encouraging well-run organisations to take the right precautionary steps like putting in place whistleblowing arrangements.
16. Internal whistleblowing can be an effective way for organisations to be alerted early to the risk corruption or fraud, and including this in any defence against the charge of failing to prevent corruption may encourage better practice across the board. [Protect's research has shown following the introduction of whistleblowing rules in 2016 into the financial sector requiring banks to have whistleblowing arrangements a 15% increase in the number of](#)

[whistleblowers raising their concerns about wrongdoing or malpractice with their employer, compared with our 2012 research](#). This shows an increased use and possible trust in those internal procedures. Whistleblowers are an essential element to the exposure of wrongdoing, but to do so they must overcome the fear of severe reprisals that are so often visited upon them. For the Bill to succeed it must also protect those who provide such vital intelligence on corruption, holding those who victimise whistleblowers to account.

If you would like to discuss any of the issues raised in this briefing in more detail please get in touch with Rhiannon Plimmer-Craig , Parliamentary Officer [rhiannon@protect-advice.org.uk](mailto:rhiannon@protect-advice.org.uk) or Andrew Pepper-Parsons, Head of Policy [andrew@protect-advice.org.uk](mailto:andrew@protect-advice.org.uk).