

Protect's Economic Crime (Transparency and Enforcement) Bill 2022 Briefing on Amendments

This briefing concerns the following amendments to the Economic Crime (Transparency and Enforcement) Bill (the 'Bill'):

a. Amendment NC14

To move the following Clause –

"Commission for the Protection of Whistleblowers

The Secretary of State shall establish a Commission for the Protection of Whistleblowers for the purpose of enhancing the transparency and enforcement of economic crime covered by this Act."

b. Amendment NC27

To move the following Clause –

"Commission for the Protection of Whistleblowers (No.2)

- (1) The Secretary of State shall establish a Commission for the Protection of Whistleblowers for the purposes of promoting transparency in relation to breaches of the provisions of this Act.
- (2) The Commission for the Protection of Whistleblowers must work with the relevant authorities to ensure that any concerns raised by whistleblowers in relation to breaches of the provisions of this Act are dealt with responsibly and effectively by the relevant authorities."

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. 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](#).
2. Regulators have also recognised 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](#)

3. For whistleblowing to work effectively, there must be effective processes in place internally, as well as effective and well-resourced external routes for raising concerns.
4. However, currently there are limited standards set on employers and law-enforcement/regulatory bodies. We are lacking a uniformed and adequate approach to dealing with whistleblowers and the wrongdoing that they raise. This is exacerbated when whistleblowers raise concerns about fraud, anti-corruption, and economic crime because of the complex regulatory landscape in this area. The [Treasury Committee has also stated that the number of agencies responsible for fighting economic crime and fraud is 'bewildering'](#).
5. Our concern is that without effective enforcement across the board, whistleblowing is seriously undermined. A Commission could help standardise the enforcement process for all employers and law enforcement/regulatory bodies who will engage with the issues and offences raised in this Bill.

B: THE COMMISSION FOR THE PROTECTION OF WHISTEBLOWERS (THE 'COMMISSION')

6. The Commission should be an independent enforcement body with the powers to:
 - a) Set standards expected of employers when they receive and investigate whistleblowing concerns.
 - b) Set standards on regulatory and law enforcement bodies when they receive and investigate whistleblowing concerns.
 - c) Investigate complaints from whistleblowers where an employer or regulator/relevant authority has failed to investigate properly or adhere to the standards set out by the Commission.
 - d) Administer civil penalties where they judge appropriate against employers or regulators for breaches of their responsibilities in the standards set out by the Commission.

I: Standards on Employers

7. Internal whistleblowing can be an effective way for organisations to be alerted early to the risk corruption or fraud. However, the whistleblowing law, the Public Interest Disclosure Act 1998, only gives workers a legal right to bring a claim if they are victimised or dismissed for raising their concerns. It does not mandate a positive duty on employers to have whistleblowing arrangements or legal requirements on how to handle those disclosures. There are limited exceptions to this such as the finance sector and health care sector where regulators, such as the FCA, have imposed whistleblowing rules on employers.
8. [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. Similarly, our [2021 YouGov survey](#) found that 79% of people support a legal requirement for employers to investigate whistleblowing concerns.

9. The Commission should set standards across any employer who may engage with breaches of the provisions in the Bill to ensure greater internal whistleblowing so that breaches are identified and dealt with at an early stage.
10. Protect thinks that these standards should be applied to all employers with 50+ employees, not just those employers who may engage with provisions in this Bill.

II: Standard on Regulators

11. 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.
12. 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 the Commission places duties 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.

III: Civil Penalties

13. Protect would also like to see the new Commission have the power to both fine organisations and individuals where it has been shown they have victimised a whistleblower, or where they have breached the whistleblowing standards set out by the Commission for employers and regulators. Protect would like the fines to be linked to an organisation's turnover.

IV: Whistleblowing protection against SLAPPS

14. The Bill also lacks any proposals to deal with the threat of Strategic Litigation Against Public Participation (SLAPPS), these are legal threats or action that are used to intimidate both journalists and whistleblowers from further escalating whistleblowing concerns e.g., via defamation, breach of confidence etc. The intention is never to go to court but to tire up the journalist and/or whistleblower in expensive legal action to inflict financial pain, to prevent or delay the disclosure of suspected wrongdoing or malpractice.
15. Our concern is that such legal threats may present a barrier to whistleblowers raising concerns about breaches to the anti-corruption measures contained in this bill, making enforcement so much harder.
16. We propose a public interest defence for an individual disclosing otherwise confidential information from the offshore property register, if they could show the disclosure was in the public interest.

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 or Andrew Pepper-Parsons, Head of Policy andrew@protect-advice.org.uk.