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Whistleblower Essentials  
**The International  
Perspective**

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attorney advertisement

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# Whistleblowing & Employment

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# The Legal Framework

- The Public Interest Disclosure Act 1998 inserted sections into the Employment Rights Act 1996 providing protection for **workers** against any form of victimisation or dismissal
- Who is protected?
  - **Employees**
  - **Workers** – extended definition includes LLP members, charity trustees, agency workers
- Contractual terms **void insofar as they preclude making a protected disclosure** – important exception to normal duties of confidentiality
- **Labour Party's manifesto** for the July 2024 general election promised to "strengthen the protections available" for whistleblowers in the workplace
- The **Whistleblowing Directive** 2019/1937/EU
  - First time that an **EU-wide legal framework** has been implemented to give protection to whistleblowers
  - Broader protection than UK law but **will influence multi-national companies**

# What is a “qualifying disclosure”?

- **“Qualifying disclosure”** – disclosure of **information** which, in the **reasonable belief** of the worker... is made in the **public interest** and **tends to show** one or more of the following:
  - Criminal offence
  - **Breach of any legal obligation**
  - Miscarriage of justice
  - **Danger to the health and safety** of any individual
  - Damage to the environment
  - The deliberate concealing of information about any of the above
- Does not matter whether it occurs inside or outside the UK – may consist of a **breach of any applicable foreign law**

# What is a “protected disclosure”?

- To also be a “**protected disclosure**”, it must be made to:
  - The worker's **employer** (silent about who within the organisation)
  - The person responsible for the relevant failure
  - Legal advisers
  - Government Ministers
  - A **person prescribed** by an order made by the Secretary of State, e.g. HMRC, ICO, FCA
  - A person who is not covered by the list above, provided certain more stringent conditions are (relaxed in exceptionally serious cases).
- **Exceptions:**
  - Disclosure of privileged information made by lawyer to whom it was disclosed
  - Where disclosure is a crime (e.g. under the Official Secrets Act)

# Detriment / Dismissal

- **Worker** has the right not to be subjected to any **detriment** on the ground that the worker made a protected disclosure
- **Employee** is regarded as unfairly dismissed if the reason (or the principal reason) for dismissal is that the employee made a protected disclosure
  - **No qualifying period of service**
  - **No cap on compensation**
  - Possibility of **interim relief** – rare in practice
- Time limit:
  - Detriment – **within three months** of the act or failure to act complained of
  - Unfair dismissal – **within three months** of the effective date of termination

# Trends

- **Tactical** disclosures – **internal** and to **regulators**, e.g. ICO
- Disclosures “**hidden**” within other complaints, e.g. a grievance
- **Anonymous** disclosures, e.g. from aggrieved former employee
- Whistleblowing **procedures to build trust**
  - **Executive level ownership**
  - **Clear** language and **simple** reporting channels
  - **Global** standard
  - Relationship with other policies, e.g. grievance, business ethics, health & safety, EDI, etc.
- Targeted / thorough **investigation** – possibly external – and **results integrated**

# Key Takeaways

1. Implement whistleblowing policy
2. Educate key stakeholders



# White Collar Perspective

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# U.K. Enforcement Environment is Changing

## International Perspective

- The U.S. enforcement regime is in flux. The U.K. and E.U. authorities have the opportunity to fill the international investigations space through utilising their international reach and leveraging whistleblower cooperation.

## Economic Crime and Corporate Transparency Act 2023 Failure To Prevent Fraud

- Large companies risk criminal liability for failing to prevent fraud from 1 September 2025.
- There is a critical six month window now to review whistleblower and other anti-fraud processes.

## Financial Incentives for Whistleblowing

- The UK Serious Fraud Office (SFO) is pushing for the financial incentivisation of whistleblowers to bring the U.K. more in line with U.S.A.

## Increased Co-operation

- The SFO Director is committed to entering into plea deals with those that actively assist investigations and promotes the use of Deferred Prosecution Agreements (DPAs).
- The SFO is due to release new guidance to corporates on co-operation and DPAs.

## Public Interest

- The UK media is very focused on corporate governance and there have been a number of high profile whistleblower related scandals. Investigations have followed.

# New Failure to Prevent Fraud Offence

- A large organisation which operates in UK or targets UK customers risks committing an FTPF offence if anyone associated with the company (“an associate”) commits a specified fraud offence
- No defence that the company was unaware of the fraud by associates or majority of the conduct overseas
- **Key defence** is the company has reasonable procedures in place to prevent fraud

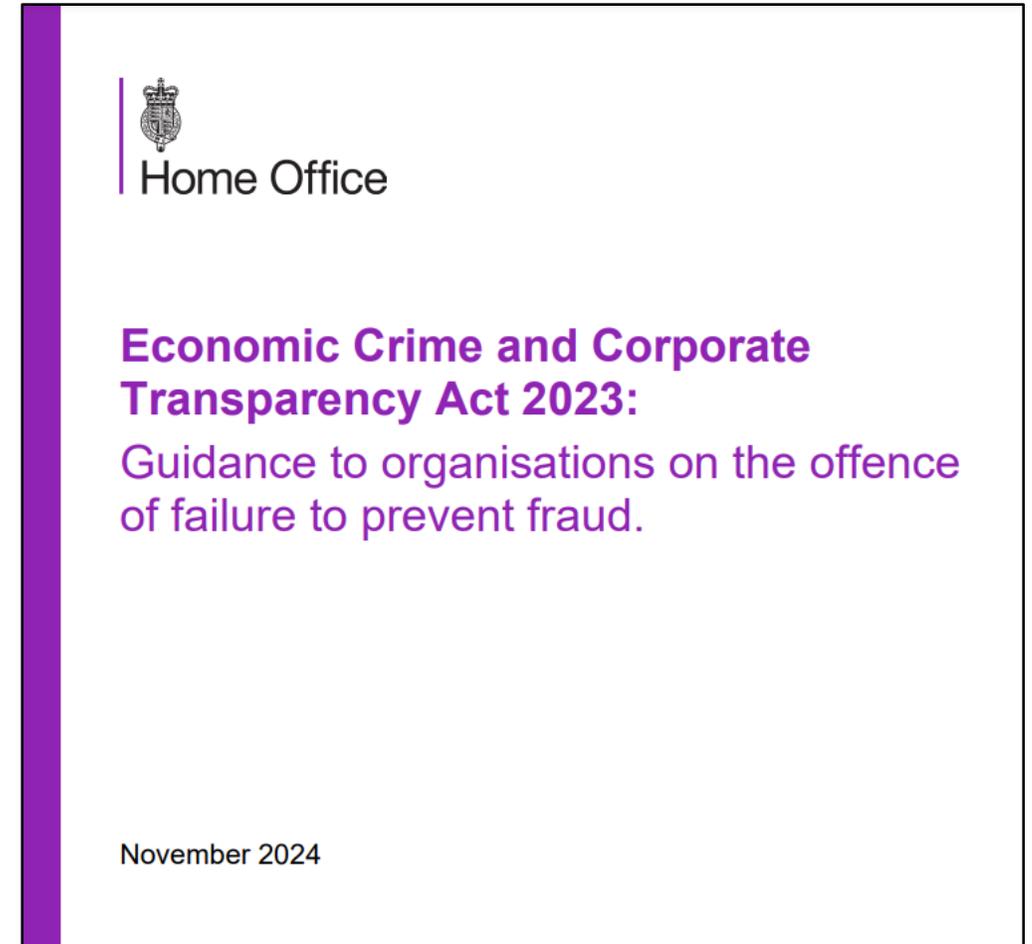
# Failing to Prepare is Failing to Prevent

Key defence for companies that operate in UK or target UK customer - “it had in place such prevention procedures as it was reasonable in all the circumstances to expect the body to have in place”



# Guidance

- The Home Office **published guidance in November 2024**
  - **Proportionate** risk-based fraud prevention policies & procedures
  - **Due Diligence**
  - **Communication & Training**
  - **Internal Reporting**
  - **Monitoring**
  - **Whistleblowing**



# Features of A Good Whistleblower Process



A risk assessment informs the right details but common features include -

- Senior management get behind the policy and set the tone from the top
- A senior whistleblowing champion formally identified
- Whistleblowing processes monitored and regularly tested / adjusted
- Trusted confidential reporting channels for whistleblowers
- Strong protections for whistleblowers
- *Good processes can help filter unmerited whistleblower complaints at an early stage*

# The SFO Wants to do Deals

 The Guardian

## [‘I can grant immunity from prosecution’: UK’s chief fraudbuster on modernising the SFO](#)

Nick Ephgrave divulges that Serious Fraud Office has 'flipped' a witness as he shares plans to boost its powers.

22 Oct 2024



*“If we’re serious about SFO cases being quicker, then we need to focus on the intelligence and evidence. Our cases, which maybe take five to six years, how much quicker would they be if we could access what we might call “smoking gun” evidence from an insider who was actually there when it happened, saw what happened...that has the documents that prove the case? How much quicker would it be if we could access that or how might we do that [...] **I think we should pay whistleblowers.**”*

13 February 2024

# Top Tips From An International Perspective

- Consider how best to preserve legal privilege in key jurisdictions at an early stage and conducting proportionate internal investigations in more serious cases
- If an enforcement report to be made consider which agencies, jurisdiction(s) and timing carefully with up-to-date international enforcement insight and coordination
- Keep careful control of the whistleblower complaint data – keep the information in country as far as possible
- Good communication with whistleblowers and prompt remedial action can help keep control
- Consider if and/or how senior managers are actively engaged in fraud prevention procedures

# In Short...



Whistleblower activity and U.K. enforcement risk will rise sharply after 1 September 2025



The international scene is worthy of closer monitoring in light of US enforcement developments



The time to get ready is **now**



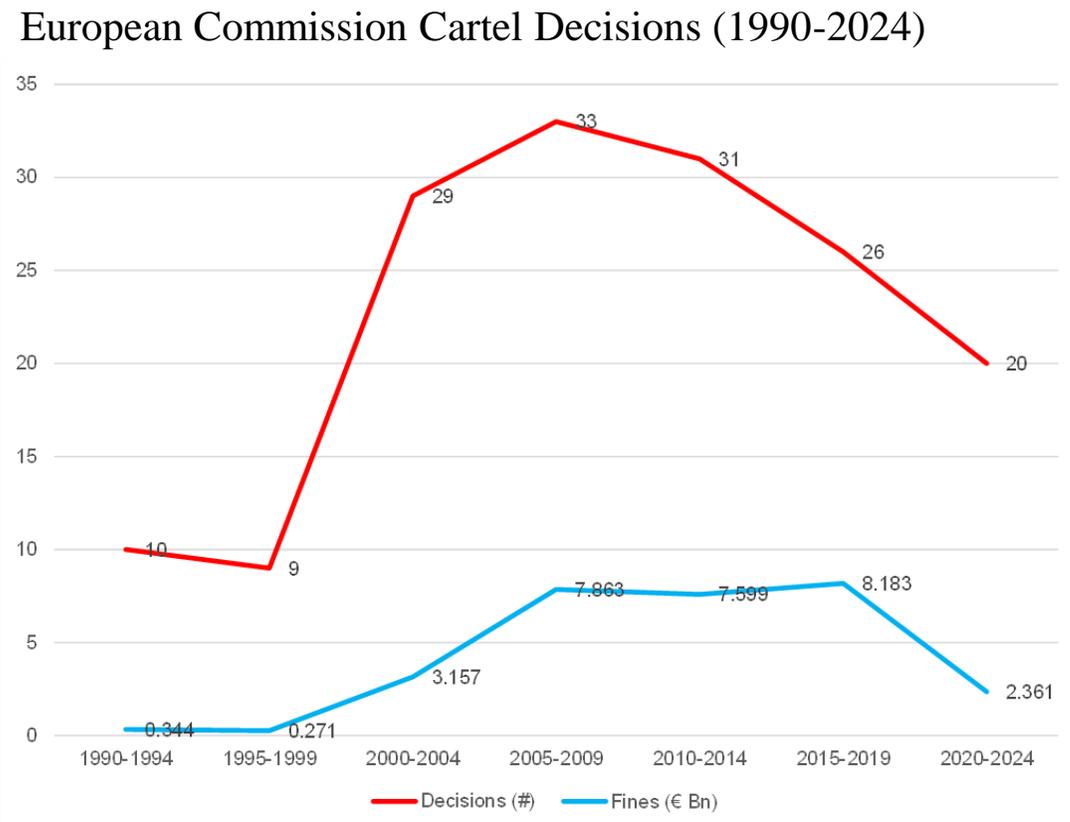
We can help you get ready and calibrate these risks in real time

# Blowing the Antitrust Whistle

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# Has corporate whistle-blower/leniency peaked?

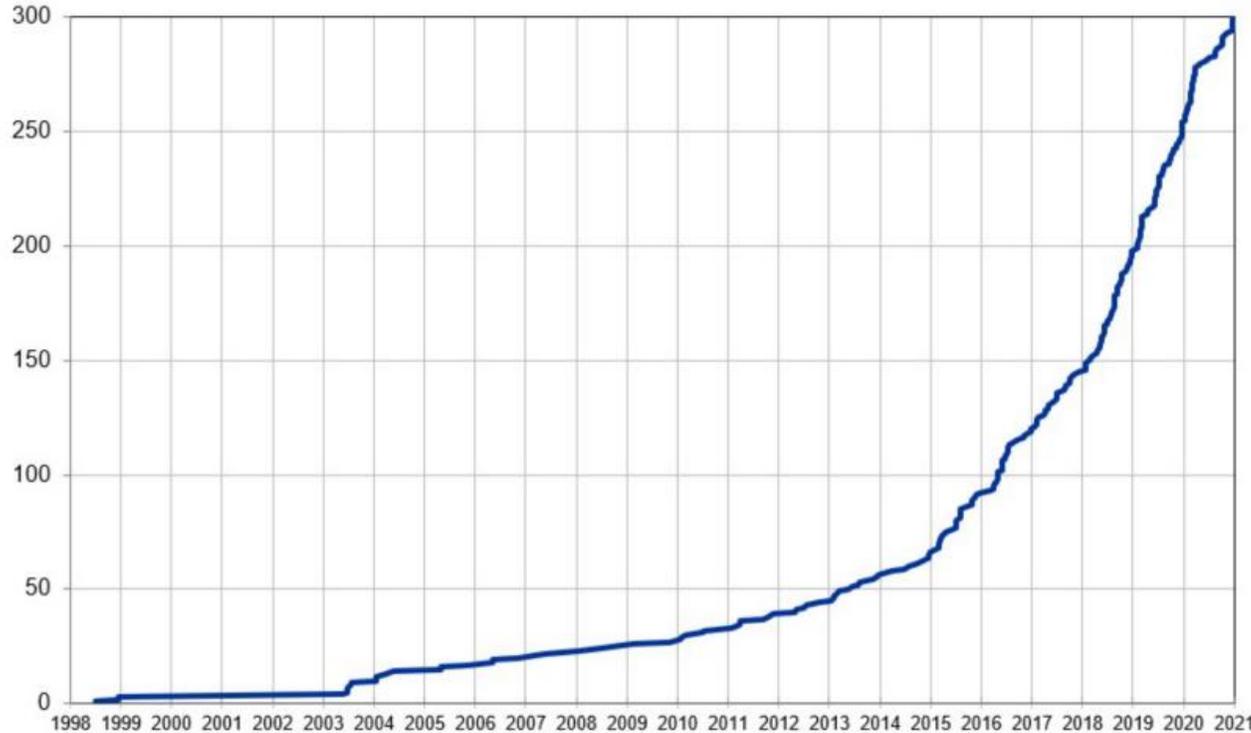
- Destabilising *cartels*, by creating corporate incentives to reduce administrative, civil, and criminal exposure from illegal cartels
- A major factor behind rise and success of public anti-cartel enforcement
  - European Commission data illustrate a trend (common across many jurisdictions)



Source: European Commission (2025)

# Follow-on Damages Litigation Has Soared

Cumulative (#) European follow-on damages actions (1998-)



Source: Laborde (2021)

- Civil follow-on actions build on public enforcement decisions
  - A civil claim "multiplier effect"
  - Court actions represent the tip of an iceberg, given high volume of settlements
- Remember the "Red line"?
- Corporate leniency applications reduced
  - Civil exposure a more prominent factor in the "leniency-equation"?
  - Less cartels?

# Individual Whistleblower Tools Are Now Common

- Destabilising cartels *and other antitrust violations*, by creating individual incentives to report employers' (and others') illegal conduct
- Many antitrust enforcers now have 'tipline' or 'whistleblower tool' service to help individuals come clean and report
  - Some agencies offer individuals 'bounty rewards'
  - A complement to corporate leniency
    - Increase (#) reports, increase pressure on corporates to act

# Implementing Processes



European Commission

EN

Law

Competition Policy

Home | About | Antitrust & Cartels | Mergers | State aid | Digital Markets Act

Home > Whistleblower

## Whistleblowers and Informants



LIFE OF THE INSTITUTION

## The Autorité de la concurrence provides whistleblowers with a framework for collecting and processing reports

October 20, 2023 | [Print the page](#)

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## Blowing the whistle on cartels

CMA increases informant reward up to £250K to crack down on cartels

From: [Competition and Markets Authority](#)

Published 6 June 2023

# Grasp the Mettle

- Create trustworthy compliance environment with tone from the top
- Establish and manage effective compliance program
- Robust, and well-known, internal whistleblowing tools increase
  - Company awareness, ability to act, and get ahead of the issue
  - Threshold for staff to report to the government
- But make sure the tools, and information, is used and appropriately protected
- Create tangible benefits for whistleblowers, in addition to legislative protections

# Reputation and Litigation Risk

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# Post-whistleblowing Risks

- Reputational crisis management
- Shareholder claims
- Consumer Claims/Class Actions



# Reputational Crisis Management



- Adverse press coverage can come with very little warning
- Engage specialist crisis PR and reputation management lawyers
- Attack or defence?
- Legal remedies:
  - reliance on defamation/malicious falsehood laws to keep coverage accurate
  - privacy and harassment laws to protect officers/employees
- Keep one eye on a) privilege and b) potential litigation

# Consumer Claims/Class Actions

- Where disclosure impacts end-users/customers/employees, risk of follow-on litigation
- Growth in consumer associations using litigation to drive change
- Claimant law firms and funders motivated by financial prize
- UK High Court routes – opt-out “rep action” or opt-in mechanisms – or Competition Appeals Tribunal
- Impact of EU Representative Action Directive- common level of redress available to consumers across all EU countries
- EU hotspots – Netherlands, Portugal, Germany

# Shareholder Claims

- Breach of contract – Shareholder's Agreement?
- Unfair prejudice petition
- Derivative actions – Part 11 Companies Act 2006:
  - Claim in respect of director's negligence, default, breach of duty; and/or breach of trust

Q&A

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