



Barclays, Danske, Lloyds: three reasons why UK whistleblower laws must change

ERIKA KELTON, Phillips & Cohen LLP

The recent run of whistleblower cases involving some of Europe's biggest banks – Barclays, Danske and Lloyds – demonstrates that UK regulators are wrong to rely so heavily on the banks themselves to handle whistleblower concerns about their business practices.

It has been two years since new rules for the banking sector were adopted to protect whistleblowers and establish individual accountability in the financial services industry. In those two years, dirty secrets about how some banks deal with whistleblowers have been revealed. The cases highlight the pressing need for the UK to seriously reconsider its approach to corporate whistleblowers and the need to do much more to protect – and also encourage – them.

Barclays

The banks and regulators' failures are abundant. At Barclays, Chief Executive Jes Staley conducted a cross-border hunt to identify the anonymous whistleblower who sent a letter in June 2016 to Barclays' board expressing concerns about a friend Mr Staley had hired for a senior position. Mr Staley not only enlisted Barclays' security in his pursuit, but also sought the assistance of the US Postal Service.

The response of UK regulators was a rap on the knuckles (a £642,430 fine from the Financial Conduct Authority), allowing him to continue as head of one of the UK's largest banks.

The Danske Bank case

An official at the bank informed Danske's top management in 2013 and 2014 about his suspicions of large-scale money laundering at a branch in Estonia.

After the whistleblower, Howard Wilkinson, threatened to go to the police, the bank offered him a pay-off if he would sign a non-disclosure agreement and told him it would investigate his claims. Danske has denied that it tried to buy Mr Wilkinson's silence. The bank took steps to stop the money laundering only after news reports surfaced in 2017.

Lloyds

Perhaps worse, was Lloyds' treatment of a company whistleblower who alerted the bank to a scam at a branch

of HBOS, a bank Lloyds had acquired in 2008, that forced some of its small business clients into liquidation, causing job losses and severe financial hardship.

After Sally Masterton, an employee in the bank's high-risk division, provided information in 2013 to the police about the matter, Lloyds forced her out of the bank. Hailed by the police for her help in stopping the scam, she received some too-little-too-late vindication last year when Lloyds apologised to her and paid her compensation of an undisclosed amount.

But for Ms Masterton, a trained accountant and insolvency practitioner who worked at HBOS and Lloyds for 16 years, the damage to her career was done. She now runs a dog-walking business.

The conclusion for whistleblowers of these high-profile cases: stay silent or be prepared to lose your job, career and income. The law will not truly protect you, but it will protect the wrongdoer from more than a token punishment.

The UK must act

If the UK wants to change that message, it must act. First, it must make the penalties for retaliating against a whistleblower more severe and give whistleblowers stronger rights to seek greater compensation for employment retaliation in the courts. Any effort to hunt down a whistleblower or retaliate should be considered a violation of the Senior Managers Regime rules and trigger a Financial Conduct Authority determination that those responsible are unfit to perform their jobs.

Secondly, the UK should adopt a system of rewards for corporate whistleblowers. The feeble argument that some legislators and regulators cling to – that people should blow the whistle simply because it is the 'right thing' to do – ignores the reality that whistleblowing comes with a heavy price.

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Why do whistleblowers have to pay that price, particularly since their sacrifices benefit others – consumers, investors and the public? The current 'reward' for UK whistleblowers – moral satisfaction – does not put food on the table or pay the mortgage when a whistleblower is fired by an employer for reporting that the company has committed serious wrongdoing.

The risks of whistleblowing, combined with the lack of whistleblower rewards, has compelled many in the UK to turn to the US to report corporate wrongdoing. The US Securities and Exchange Commission (SEC), which offers whistleblower rewards, has received nearly 400 whistleblower submissions from the UK in the past five years.

Since 2010, more than \$1.7bn (£1.3bn) in monetary sanctions has been recovered based on information provided by whistleblowers. In return, the SEC has made awards to whistleblowers totalling more than \$326m (£252m).

'Whistleblowers have played a vital role in unmasking fraudulent schemes that might otherwise evade detection,' said US Assistant Attorney General Jody Hunt recently about a highly successful whistleblower reward programme that the Department of Justice handles. 'The taxpayers owe a debt of gratitude to those who often put much on the line to expose such schemes.'

SEC officials share that sentiment and consider the whistleblower programme a 'game changer' in securities

enforcement. The US Commodity Futures Trading Commission has a similar programme.

Conclusion

Not only do strong whistleblower programmes help stop fraud, they also encourage companies to build meaningful internal compliance systems. Well-designed whistleblower programmes increase the chances that corporate wrongdoing will be exposed, and therefore have a deterrent effect. This was confirmed in a 2018 Canadian study that found the SEC whistleblower programme has deterred fraud in corporate financial reporting. A separate study found that employee whistleblowers play an integral role in monitoring firm behaviour. In the UK, it is time to put aside any cultural distaste for offering rewards to whistleblowers and recognise their value and the sacrifices they make. Whistleblowers not only deter fraud and help recover the billions lost to it, but they increase transparency in global markets - which have become increasingly complex and opaque, even to regulators.

We need to stand up for whistleblowers like they do for us. They deserve much more.

Erika Kelton is a partner at Phillips & Cohen LLP, a leading US law firm that represents corporate whistleblowers in the US, the UK and other countries under US whistleblower programmes.

International SEC whistleblowers by top locations

