

THE ROLE OF WHISTLEBLOWERS IN THE FIGHT AGAINST ECONOMIC CRIME

There is a story, very possibly apocryphal, told of a bank in London, in which a junior cashier, recently trained in the anti- money laundering regime at the bank, came to her line manager to say that she wished to report her suspicion that the money in a certain customer's account came from drugs trafficking. As the customer in question was an established and respectable one, the manager assured her that this would not be necessary. She insisted, however, that she wished to make a report, the Manager again said that it was really not necessary and only eventually did he reluctantly fill out a report, send it up to the Money Laundering Reporting Officer and thence to the National Criminal Intelligence Service. As it happened, the report led to an investigation into the man in question, further evidence against him was uncovered and he was convicted of supplying Class A controlled drugs. It was only as an aside after the man's conviction that the cashier was asked what it was that made her so sure that the customer was a drugs trafficker. "Oh," she said, "that's simple. He's the man I buy my Ecstasy from when I go out clubbing."

Apocryphal or not, the story makes two important points. Firstly, the key to uncovering economic crime and bringing the perpetrators to justice is often one individual, indeed, quite possibly one who has definite inside knowledge. But secondly, the system does not always welcome that individual speaking about what they know and may go to great lengths to stop them from doing so. The whistleblower is of paramount importance in the fight against economic crime – yet at the same time, they are often in a far from strong position. Indeed, they may not only be weak, but actually vulnerable. In order to establish how to counter this problem, this paper considers first who the whistleblowers actually are, then the pressures which can be applied to them and finally, what measures can be put in place to protect them.

Who are the whistleblowers?

Frequently, the crime concerning which a person wishes to blow their whistle is actually committed inside their organisation, perhaps by a senior officer. This of course applies to all crime, but it is perhaps particularly true of economic crime. It of course applies to those who have been knowingly and deliberately involved in a criminal organisation: the *pentito* in Sicily or the supergrass in Northern Ireland.¹ But it applies equally to those who work in a legitimate company or institution, in which a small minority, possibly only one person, is engaged in economic crime: often fraud, sometimes money laundering or insider dealing.

In investigating fraud committed against a financial institution by one of its own officers or employees, it has often been found that several of the fraudster's colleagues knew

¹ Organised economic crime is not confined to "traditional" criminal organizations, ie. those whose principal aim is to make money: no more, no less. It is now well documented that it is also perpetrated on a regular basis by terrorist organizations, such as Al Qaeda or the Provisional IRA.

what had been going on and had often known for quite some time. On reflection, this should not be surprising, for two reasons. Firstly, those who work closely with a person will soon notice if their behaviour changes for any reason. But secondly, the staff of a financial institution are trained to know how legitimate business should be done and hence will know when things stray outside this. It may be helpful to look at these in turn.

In a financial institution, colleagues work closely together and get to know each other well. This is, of course, true of many types of business, but it is perhaps particularly true of a financial institution where hours are often long and people work together as a team, whether on a new project, putting together a product for client or managing an investment portfolio. They will get to know the patterns of behaviour, not only colleagues but secretaries will first be dealt with on first name terms and then often become friends. They will socialise together, in some countries going out drinking on a Thursday or Friday night, talking not only about work but about the football, their partner or family, their plans for the weekend. Through all this, they become well known to each other at not only a professional but also a personal level.

Then, through working together, their habits become known to each other. Who comes into the office at 6.55 am every morning and who is there at 6.30? Who goes out on a Thursday night and who carries on working? Who flirts with the female staff and who does not? Who dictates letters, memos and e-mails to their secretary and who tends to write them him or herself? All of these things form patterns. Should these patterns change, the person's colleagues will therefore be the first to notice. Why is it, a secretary will wonder, that her boss, who always used to dictate all his correspondence to her, is now writing a lot of it himself? Why is it, colleagues will wonder, that, despite the fact that no major project is ongoing, that a person remains in the office every night after everyone else in his department has left? This may be explained by the fact that this person is a particularly hard worker, but colleagues will know if this is the case. If it is a recent change in behaviour, others will notice.

A final point to be made in relation to changes in patterns is a change in lifestyle. Lifestyle choices cost money and this money has to come from somewhere. If, just after large bonuses have been awarded, a person in a bank goes more often to expensive wine bars and orders bottles of champagne rather than beers or ordinary wine, this is nothing unusual: most of his colleagues will be doing likewise. The same applies to other large spending: a new, expensive car or a larger and better house. Similarly, a given level of expenditure can be explained by a large salary: the financial services sector is among the best paid in the economy. But colleagues will know what they all earn (at least approximately) and they will also know what bonuses have been awarded when. If what a colleague is officially earning and the lifestyle he is leading simply do not match up, at least some will wonder where the rest has come from. Unaccountable wealth is, of course, a familiar concept in anti-corruption strategies: many jurisdictions have provisions requiring any public official to explain, if asked, where sums in his bank account and / or those which he appears to be spending have come from.² It has similarly

² The best known example is probably section 10 of Hong Kong's Prevention of Bribery Ordinance, although there are numerous others

made an increasing appearance in the search for the proceeds of crime: in the UK, both the provisions for confiscation and, now, civil recovery, require the defendant to explain in certain circumstances where his assets have come from.³ Its potential as a tool for detecting fraud has, however, often been overlooked.

In addition to this awareness of changes in patterns, which all may notice, there is the additional training that staff in financial institutions have in what does and does not naturally fit with legitimate business. This applies not just to banks but to investment firms, insurance companies, firms of accountants and so forth. Some of this training is formal. As noted above, in the United Kingdom, as in many jurisdictions, all staff in financial institutions (and, now, a number of other sectors as well) are trained in the factors that may indicate money laundering.⁴ There are also fraud awareness programmes: in the United Kingdom, officers of both the Metropolitan and the City of London Police assist financial institutions in running such courses to assist staff in identifying factors which can indicate fraud, whether internal or external. But in addition to these, there is the informal training that comes simply from experience. Not only will staff learn what the normal patterns of a given colleague's behaviour are, they will also learn over time what the normal ways of doing business are. If they way in which an experienced colleague goes about his work simply does not fit with these patterns, people will soon become curious as to why. It will just not make sense.

Thus far, we have considered whistleblowers who are members of staff of the same company as the fraudster, money launderer or whatever. A further category, however, is also of prime importance: the auditor or accountant. In the U.K., the Companies Act 1985 requires the accounts of all publicly listed companies (PLCs) to be reviewed annually by external auditors and those of private limited liability companies to be similarly reviewed by a chartered accountant. Many other countries have similar requirements. The purpose of these provisions is to ensure that any failures in governance, incompetence as well as outright criminal behaviour, may be identified by a person who does not have a vested interest in it remaining undisclosed. Such persons are even more highly trained than the average financial services professional in what are the characteristics of legitimate behaviour and what are not. They are therefore extremely well-placed to notice if anything is amiss; as just discussed, that is their very function. It is true that, sometimes, duplicate sets of accounts can be prepared for the auditor or accountant: a genuine one disclosing the actual position and a fictitious one giving an illusory picture of the company, intended to deceive the auditor along with everyone else. But generally, the auditors / accountants are aware of the real position. Indeed, where they do not disclose fraud, it transpires all too frequently that there has been at least an

³ Although, in the UK, at least, the civil recovery provisions are relatively new, the requirement for a defendant to prove the source of his assets in confiscation proceedings is well-established. For a consideration of some of the issues arising from this, see R. Alexander, "Do the UK's Provisions for Confiscation Orders Breach the European Convention on Human Rights?", *Journal of Financial Crime*, May 1998.

⁴ This has been a legal requirement in all EU Member States since the introduction of the first EU Money Laundering Directive in 1991, although certain of the "new" Member States which acceded in May 2004 introduced it somewhat more recently.

element of collusion, rather than of them being innocently deceived. The tale of Enron and Arthur Andersen is a case in point.

What are the pressures on whistleblowers to remain silent?

These, then, are the main types of potential whistleblowers. But the fact that a person knows that criminal activity is going on does not necessarily mean that they report it. There are a range of pressures which can be brought to bear in order to persuade them to keep silent. Some are greater than others, but all are equally real and must be faced if whistleblowers are to be protected adequately.

The first pressure is the one which perhaps receives the greatest publicity: the direct threat of violence if the individual concerned reports what they have discovered. If the illicit activities are those of a criminal, or indeed terrorist, organisation, it can make it very clear that it expects knowledge of its activities to be kept within the circle and that anyone who speaks out will be killed or at least seriously injured. On some occasions, the threat does not need to be spelled out: the reputation of the organisation is enough. No one in Palermo, St. Petersburg or Belfast needs to have the rules explained to them. The pressure is even greater where the violence may be carried out not only on the potential whistleblower himself but also on his family.

It is clear that such threats and fears need to be taken extremely seriously. Quite apart from the fact that they can dissuade people from blowing the whistle in the first place, they are equally effective in silencing witnesses who have come forward. A dead witness is, after all, extraordinarily reticent – and it is ultimately in court that the testimony will be most effective. Even if the whistleblower is merely injured, he will certainly take this as a warning: retract or worse will follow. Similarly, a photograph or even mere reference to a member of his close family is also likely to achieve the desired result: in many cases, no further action need be taken for the witnesses to become remarkably forgetful.

It should not be thought that this problem can be solved merely by arresting the suspect before he has a chance to threaten witnesses: action can often be carried out even from behind bars. One example will suffice: a prison officer in Northern Ireland received a warning note inside his locked car at his home, itself located some 100 km from the prison, less than 24 hours after an argument with an IRA prisoner.

What is required in such cases is an adequate witness protection programme. A system must exist whereby the potential witness can be assured that he can disappear completely after he has given his evidence. If such a system is not already in place, it must be set up. This will involve giving the witness – and his family – a completely new identity and setting them up in a new location, at a considerable distance from their previous activities, home and connections. As far as the witness' previous life is concerned, he must quite simply cease to exist: he must disappear into thin air. This may be assisted by a report of his death, but in any event, it must be convincing and total. The moment that

the person against whom the witness testified, or indeed their associates, discover his new whereabouts, he is in just as much danger as he was before. Insofar as it is possible, therefore, this must not be permitted to happen.

A country such as Nigeria has characteristics that simplify this, as well as others which make it more difficult. One major advantage that Nigeria has over the United Kingdom, for example, is its size. Abuja and Lagos are situated several hundred kilometres apart, yet this is only half-way across the country. Within such a large country, there are a number of large cities: new locations can therefore be more easily found than, for example, in the Netherlands or even the U.K.

Large though Nigeria is by European standards, it is nonetheless relatively small compared to two of the countries most successful in relocating witnesses: the United States and Canada. It is not unheard of for the FBI to relocate a New York witness to a rural village in the Rocky Mountains; the Royal Canadian Mounted Police have organised relocation programmes over even greater distances, from Toronto to the Alaskan border. It is therefore more foreseeable that a witness relocated within Nigeria could be found than in these truly vast jurisdictions. This is exacerbated by Nigeria's cultural diversity: it is not for nothing that Abuja is described as the "Centre of Unity". A Yoruba from Lagos will be conspicuous in Hausaland, nor may he be particularly comfortable. Similarly, a Christian from Port Harcourt may not fit in particularly well in Muslim Kaduna or Katsina.

These are not, however, insuperable problems: international co-operation can be of vital assistance here. Since the United Kingdom is relatively small; its law enforcement agencies have, when necessary, entered into arrangements with their counterparts in Australia and Canada: a witness from Liverpool will not be so easily found in a small town in rural New South Wales or central Alberta. Nigeria can enter into similar arrangements; given the prominence that is given in many countries to the problems of Nigerian frauds, for example, the law enforcement agencies of several countries, in Europe and elsewhere would be likely to be very amenable to an approach for help. There is the problem of the large and widespread Nigerian diaspora abroad: it is a risk that a cousin of the person against whom the witness has testified may happen to be located in the area of relocation. But with care, even problems such as this may be overcome.

It is important, however, that a witness protection programme not be seen as a panacea. It is not. It has its difficulties. Firstly, it is very expensive. The state, in particular the law enforcement agency, must fund a complete change of identity. They will need to buy the witness a house in his new area or, at the very least, fund the rent for a while. They will need to provide travel expenses and arrange for the removal of at least some of the witness' property. This is not merely a courtesy to the witness (although the witness will expect such courtesies if he is to be persuaded to co-operate); it is necessary to the very credibility of the relocation. The cover story will need to be that much better if it is to cover not only why the person has arrived in his new location out of the blue but also why he has arrived there with virtually no property to his name.

Secondly, the risk can never be discounted that the relocated witness will do something that jeopardises his new identity. It is remarkably common for persons under a witness protection programme to return for a visit to their old haunts for no other reason than that they are homesick and miss their friends. Worse still, it was reported in the UK that a former Loyalist terrorist, with a new identity in a new location in the north-east of England, was discovered after he attempted to impress people in the pub by telling them, "I used to be a hard man in Belfast." Stupid, yes, but it happens: a witness' intelligence does not always relate to how bright they are. Nor is it mere bravado: the feeling of isolation and disorientation of many relocated witnesses is a genuine problem. In principle, of course, if the witness themselves compromises their new identity, that is their problem: it is not then up to law enforcement to provide them with a second new identity and new location. In practice, however, such assistance will be granted. This is not only because there is a general feeling that law enforcement agencies should do what they can for those who have risked their lives giving evidence, right though this sentiment is. Every relocated witness who is identified and harmed renders the scheme less credible to the next potential witness and hence makes it less likely that they will come forward. There is a very definite practical reason, not just not a moral one, to continue to give assistance. Witness protection programmes are far from problem-free, but they are an essential tool in the fight against organised crime.

Although physical threats are the most direct type of pressure, they are far from the only form. Where the crime is being committed by an individual inside a legitimate institution, that person, if he or she suspects discovery, is very unlikely to react to a risk of being revealed by threatening violence. In many institutions, particularly in some countries, it simply would not work: it would provoke the potential whistleblower into going straight to law enforcement. Far from ensuring silence, it could well trigger the reverse. Other types of pressure need therefore to be found.

Of these, an important one is the threat to the whistleblower's employment. A member of staff who discovers wrongdoing in their institution may well be reluctant to speak out for fear of losing their job. This is particularly so where the criminal is in a more senior position. If there is a formal investigation, it may well come down to a question of one person's word against the other's. Who will be believed: a senior and well-respected executive or a secretary? Before that, the criminal may well take action to remove the colleague who threatens him. It may start with a remark to management that "George doesn't really seem to be fitting in", although if he is more confident, he may call the whistleblower's bluff by himself making a complaint: "Jane has recently been making the most unpleasant allegations about me and I really am not prepared to tolerate them any longer." In the 21st century, harassment claims need not be confined to the sexual sphere. Another option, again common in the 21st century, is that of redundancy. Few, if any, managers or boards of directors react with indifference to proposals put forward to save the institution money: a suggestion that a given department be "downsized" often falls on receptive ears.

This latter threat is all the more effective when it is likely that there will be redundancies in any event, the only question being whose job will it be that goes. As with physical threats, the pressure may not be directly and explicitly applied: it is quite sufficient if the potential whistleblower is aware without being told that job cuts are in the air and fears that theirs will be one of them if they “rock the boat”.

To combat this, there need to be specific employment protection measures relating to whistleblowers. In the United Kingdom, these were introduced comparatively recently, under the Public Interest Disclosure Act 1998. This inserted into the Employment Rights Act 1996 a number of provisions protecting workers who make “protected disclosures”. These are in turn defined as “qualifying disclosures”. It is useful first to consider what constitutes such a disclosure.

Under section 43B of the 1996 Act, inserted by section 1 of the 1998 Act, a “qualifying disclosure is any disclosure of information which, in the reasonable belief of the worker making it, tends to show one (or more) of a number things. The first two are specifically linked to economic crime: that a criminal offence has been committed, is being committed or is likely to be committed or that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.⁵ The first of these will clearly cover cases of fraud, money laundering, insider dealing and market manipulation, since these are criminal offences, but the second is also significant: it will cover, for example, failure to make proper and timely disclosures to the stock exchange or the Financial Services Authority or market abuse, the civil counterpart of insider dealing and market manipulation introduced under Part VIII of the Financial Services and Markets Act 2000. It will also, of course, cover things which, although not criminal or even regulatory offences, are nonetheless breaches of an officer’s duty to the company: contractual obligations are legal ones.

The other categories are less directly linked to economic crime, but they are perhaps worth mentioning in passing: that a miscarriage of justice has occurred, the health or safety of any individual has been endangered or that the environment has been damaged.⁶ These highlight the importance of the health and safety and the environmental protection laws in place in the U.K. As with the previous two, a qualifying disclosure may also be made where the situation is either currently ongoing or is likely to arise in the future. A fifth and final circumstance is that information tending to show any matter falling within any one of these (and other) categories has been or is likely to be concealed.⁷

It will immediately be noted that, for a disclosure to be protected, it is not necessary to establish that its contents are actually true, merely that the worker reasonably believed them to be true. This is essential if the protection is to be at all effective. In many, probably the overwhelming majority of cases, the person in the position of whistleblower does not have absolute, cast-iron proof of an offence, but is nonetheless sure that something is amiss and has good reason for believing so. In the case considered above,

⁵ Section 43B(1)(a) and (b).

⁶ Subsections (c), (d) and (e).

⁷ Subsection (f).

Alan, at the time that he voiced his suspicions that Bill was engaging in fraud, could not actually have proven it. There was, conceivably, an innocent explanation for Bill's actions, albeit that they were highly suspicious. The same will apply to the colleagues and secretaries in a financial institution who suspect that one of the officers is engaging in illicit behaviour: when they say, after the fraud, etc. has come to light, that they knew it was going on, what they generally mean is that they strongly suspected it. If such persons, should they report their suspicions, will only be protected if they are proved to be correct, this will itself be a major incentive to remain quiet and do nothing. What if they are wrong?

The provision is not, however, a *carte blanche* for malicious gossip. The worker must believe that the information which he discloses is true and, furthermore, this belief must be reasonable. The purpose of the section is to provide protection for those whose professional instincts (or, quite possibly, common sense) tell them that a person is engaging in wrongdoing and who act on that by reporting their suspicions. It may be compared to the protection given in the German *Geldwäschegesetz* (Money Laundering Act) to persons who report a suspicion of money laundering: they are protected provided that the making of the report is neither malicious nor grossly negligent.⁸

Having established to what a protected disclosure relates, the Act then goes on to deal with to whom it is to be made. There is quite an exhaustive list of persons, only some of which are specifically relevant to economic crime. Section 43C relates to disclosures made to the worker's employer or, where he reasonably believes that the matter relates to the conduct of some other person or a matter for which a person other than this employer has responsibility, that other person. The disclosure must be made in good faith, although one would suggest that, if the whistleblower reasonably believes that the information he discloses tends to show one of the matters set out in section 43B, it will by definition be made in good faith. Section 43F deals with disclosures to prescribed persons, ie. persons prescribed by a statutory instrument to receive such disclosures: for this to apply, the whistleblower must reasonably believe firstly that the matter falls within the remit of the person to whom he reports and secondly that the contents of the disclosure are true.

Finally, there is provision, in section 43G, for disclosures made to other persons. This has the greatest number of conditions attached to it. Firstly, as under the previous sections, the disclosure must be made in good faith and, linked to this, the whistleblower must believe that information disclosed and the allegations it entails are true. But secondly, it is required that the disclosure may not be made for the purposes of personal gain. This does not mean that the whistleblower is disqualified from receiving any reward payable under a legal provision for the disclosure: section 43L(2) makes this clear. But it does mean that the whistleblower's own gain must not be the motive for the disclosure. The Act does not specify what is meant by personal gain, but it could be argued to include not only money but also a personal advantage in the workplace: an example might be where both the whistleblower and the person against whom he makes

⁸ para. 12.

the disclosure are both seeking a promotion to the same position. Thirdly, the disclosure to the person in question must be reasonable “in all the circumstances of the case”.

Further conditions are, however, laid down in section 43G(2), although only one of them need be satisfied. These are, firstly, that the person believes that, if he were to make the disclosure to his employer, instead of the person to whom he does make it, he would suffer detriment. “Detriment” essentially means that he would be dismissed, made redundant or suffer constructive dismissal.⁹ Alternatively, there may be no person prescribed for the purposes of a prescribed disclosure and, furthermore, the whistleblower may believe that, if he does make a disclosure to his employer, evidence of the wrongdoing will be concealed or destroyed. Finally, he may make a disclosure to another person if he has already made a disclosure of substantially the same information either to his employer or to a prescribed person. Although the Act does not say so, the inference is that this remedy is open to the whistleblower if he has already tried to make a disclosure through the normal channels but nothing has resulted from it. This can and does happen where the person’s employer hears the disclosure but does not believe it, a problem discussed below.

The establishment that a person has made a qualified, ie. protected, disclosure has the result that it is then unlawful for his employer to cause him to suffer detriment, either by acting or by failing to act. The whistleblower may not, therefore, be left to suffer abuse at the hands of his colleagues while his employer merely looks on. Nor may he simply be dismissed. The importance of this is underlined by the fact that the Act specifically makes exceptions to the normal rules governing unfair dismissal. In general terms, a person who has been employed for a period less than 12 months is not entitled to bring an action for unfair dismissal should he be dismissed. Since he will generally have a contract of employment, he may bring an action for breach of contract, but the general remedies of employment, as opposed to contract, law are not available. This is not the case, however, where the employee argues that the reason for his dismissal is that he made a protected disclosure.

Just as he may bring an action for unfair dismissal should his employer fire him, he may also do so if his employer forces him out by more subtle means. It may happen that the employer will want him to leave the company or institution but hopes to persuade him to resign. One way he may do this is by altering the employee’s conditions of employment such as to make his position unsatisfactory at best and actually untenable at worst. Faced with this intolerable situation, the employee then leaves and the employer has achieved his end without actually dismissing him. In the case of a person who has made a protected disclosure, this will certainly constitute action by the employer which causes him to suffer detriment and hence be unlawful under section 47B. But in addition, the employee may bring an action for unfair dismissal under the general principle in English employment law of constructive dismissal. This simply means that, although the employer did not actually dismiss him in the sense of serving him with a notice of the termination of his employment, he did engage in behaviour which amounted to the same

⁹ For the definition of constructive dismissal, see below.

thing. The whistleblower is protected from this, regardless of how short or long a time he had been employed, just as he is from being actively dismissed.

Similarly, he is protected, at least in part, from redundancy. Redundancy is of course a principle whereby a person's employment is terminated simply on the grounds that the employer no longer has room for that particular position. Frequently, redundancies are made as part of cost-cutting measures, although it is sometimes alleged instead that the employer is merely seeking to run his business more efficiently. In either case, the popular buzzword is "downsizing".

Redundancies are often necessary; indeed, they are often seen as an unavoidable feature of the economy of the early 21st century. It has, however, long been recognised that employers can use a redundancy programme, even if it is in itself necessary, to rid themselves of perceived troublemakers. The company may need to shed 20 employees for entirely legitimate reasons; the question, however, is which 20 will it be that lose their jobs. Here, too the Employment Rights Act 1996, as amended by the Public Interest Disclosure Act 1998, has a part to play. Where a person who has made a protected disclosure is made redundant, rather simply being dismissed out of hand, he will still have a cause of action if the reason why the employer selected him, rather than others, for redundancy is the protected disclosure that he made.¹⁰

Threats to the whistleblower's employment can and should therefore be catered for. But there remains another legal pressure: the fear of action for breach of confidentiality. This generally arises in relation to suspected wrongdoing not on the part of a colleague, but on the part of a client. For entirely legitimate reasons, most, if not all, jurisdictions have legal provisions, requiring professional confidentiality on the part of financial services professionals (and indeed some other professionals). In the U.K., these provisions are generally civil in nature, in some cases (such as lawyers), supplemented by professional conduct rules. Only in very few exceptions are there criminal sanctions and none of these relate to the financial services sector.¹¹ In a number of other European countries, however, it is normal for criminal sanctions to be provided for general breaches of professional confidentiality. In some, such as Switzerland and Luxembourg, such breaches carry a mandatory prison sentence. It is therefore of the greatest importance that a report of suspected money laundering, which is not only encouraged but now actually required by law in many jurisdictions, must carry a safeguard that the person making it will not as a result be faced with legal penalties for breach of confidentiality. This a number of international instruments, including the EU Money Laundering Directive, now require and such safeguards it is therefore a widespread provision that a person who reports knowledge or suspicion of money laundering may not, in consequence, be liable for breach of confidentiality. The relevant provision in the U.K. is section 337 of the Proceeds of Crime Act 2002.

¹⁰ Employment Rights Act 1996, s.105(1), (6A), as amended by the Public Interest Disclosure Act 1998, s.6.

¹¹ The principal example concerns certain medical professionals.

This is well and good, but there are a number of ancillary risks, including defamation, should the report be found to have been made in good faith but nonetheless actually wrong, actions of loss of profits, in the same circumstances, or actions under the doctrine of constructive trust should the relevant law enforcement agency ask the financial institution to proceed with a requested transaction. For this reason, many jurisdictions, including, in Europe, France and Germany as well as the traditional bastions of secrecy in the financial services sector, namely Switzerland, Liechtenstein and Luxembourg, have a much wider provision: a report of a suspicion of money laundering, made in compliance with the legislative requirements, may not result in any criminal or civil penalties being imposed on the person who made it. The reference is not specifically to penalties for breach of confidentiality, as in the U.K., it is to any resulting penalties, criminal or civil. As seen above, Germany requires, in order for the protection to apply, that the report must not have been made either maliciously or through gross negligence; France similarly imposes a requirement of good faith (which may be compared to the provisions in the U.K.'s Protected Disclosures Act). But, provided that this is satisfied, the protection is rather more comprehensive than that which the U.K. provides.

In conclusion, therefore, although whistleblowers are indeed a vital tool in the fight against financial and economic crimes in their various forms, there are several pressures which can act powerfully to dissuade them from speaking out. These must be identified and adequately dealt with in relevant legislation. The life of the whistleblower will never be an ideal one – this one cannot provide – but it is possible to provide a number of basic protections. This is not simple a moral choice, although it is right that, where someone does take the risk of speaking out for the benefit of a cleaner financial services sector, the system has an obligation to them. It is also a practical one. Whistleblowers are essential, but they will only exist if they have reason to believe that they will be protected.

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