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# The Inside Track

## The Role of Financial Rewards for Whistleblowers in the Fight Against Economic Crime

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**About the author**

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The Serious Organised Crime & Anti-Corruption Evidence (SOC ACE) research programme aims to help 'unlock the black box of political will' for tackling serious organised crime, illicit finance and transnational corruption through research that informs politically feasible, technically sound interventions and strategies. Funded by the UK's Foreign, Commonwealth & Development Office (FCDO), SOC ACE is a new component in the Anti-Corruption Evidence (ACE) research programme, alongside Global Integrity ACE (GI ACE) and SOAS ACE. SOC ACE is managed by the University of Birmingham, working in collaboration with a number of leading research organisations and through consultation and engagement with key stakeholders.

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# Acronyms and abbreviations

| | |
|---|---|
| **CFTC** | Commodity Futures Trading Commission (US) |
| **CMA** | Competition and Markets Authority (UK) |
| **CRA** | Canada Revenue Agency |
| **DOJ** | Department of Justice (US) |
| **FCA** | Financial Conduct Authority (UK) |
| **FOI** | Freedom of information |
| **FinCEN** | Financial Crimes Enforcement Network (US) |
| **G7** | Group of Seven nations |
| **HMRC** | HM Revenue and Customs |
| **IRS** | Internal Revenue Service (US) |
| **NGO** | Non-governmental organisation |
| **OECD** | Organisation for Economic Co-operation and Development |
| **OSC** | Ontario Securities Commission |
| **OWB** | Office of the Whistleblower |
| **PRA** | Prudential Regulation Authority (Bank of England) |
| **RUSI** | Royal United Services Institute |
| **SEC** | Securities and Exchange Commission (US) |

# Summary

International interest is growing in the role whistleblowers can play in supporting wider strategies to combat economic crime. Recent high-profile scandals within the financial and professional services sectors have demonstrated how insider information can be critical to the successful detection, investigation and prosecution of these well-hidden crimes. Many countries have implemented reward programmes designed to incentivise whistleblowing across a range of illicit financial activities, including tax law violations, foreign bribery and corruption, securities and commodities malfeasance, cryptocurrency fraud, money laundering and sanctions evasion. These programmes view whistleblowers, first and foremost, as sources of intelligence and accordingly prioritise the value of their information over the motivations of the individuals. Evidence from programmes in North America (referring here to the US and Canada) indicates that rewards have driven greater insider reporting. However, some countries oppose their implementation due to cultural norms against paying whistleblowers and concerns regarding effectiveness and potential negative consequences.

This paper reviews the evidence from the US and Canada on the use of reward programmes for whistleblowers who report incidents of economic crime and evaluates it against concerns raised in two countries that are debating the implementation of such a scheme, Australia and the UK. In doing so, this paper identifies the key impacts of whistleblower reward programmes as increasing actionable information provided to law enforcement; creating an economic crime deterrent effect; strengthening private sector compliance; and enabling whistleblowers to access specialised legal counsel. However, the paper analyses how these positive outcomes are contingent on appropriate safeguards being integrated into the design of a reward programme to account for context-specific cultural attitudes and mitigate possible unintended consequences, such as attracting frivolous or malicious reports, creating a conflict of interest with existing legal duties, or compromising the integrity of the regulator.

Moreover, this paper identifies that it is crucial to the implementation of a whistleblower reward programme that policymakers understand it to be a mechanism primarily designed to achieve the regulatory goals of economic crime detection and deterrence. Therefore, to operate effectively as a strategy to combat illicit finance, rewards must form part of a comprehensive framework to ensure all whistleblowers are adequately compensated and protected. With these findings in mind, the paper concludes with a set of four observations for policymakers who are considering the implementation of whistleblower rewards in the fight against economic crime.

# 1. Introduction

Economic crime is characterised by deception, obfuscation and subterfuge. This inherent secrecy not only severely impedes the ability of regulators and law enforcement agencies to detect, investigate and prosecute such crimes, but also conceals the immense corrosive impact economic crime has on economies, communities and democratic principles. The United Nations, Organisation for Economic Co-operation and Development (OECD) and G7 (Group of Seven nations) all recognise that economic crime represents a fundamental threat to global security and have highlighted the need for action (Home Office, 2021; OECD, n.d.; United Nations Office on Drugs and Crime [UNODC], n.d.). Policymakers around the world have answered the call and are prioritising the development of novel and effective anti-economic crime efforts. US President Joe Biden in 2021 established the fight against corruption as 'a core national security interest of the United States' (The White House, 2021). Successive UK governments have implemented numerous strategies and statutes to 'deliver a holistic plan that defends the UK against economic crime' (HM Government, 2023, p. 8).[1] The Australian federal budget in 2024 substantially increased funding for specialised financial crime enforcement agencies (Jeans & Shamai, 2024); and the most recent Canadian federal budget contained several initiatives and legislative reforms aimed at combatting economic crime (Dillon & Aboud, 2024).

In this context, interest is growing in the role whistleblowers can play in supporting wider strategies to combat illicit finance. Recent financial scandals have demonstrated that using information from insiders is often the only way to successfully unravel the convoluted web that white-collar criminals weave. The whistleblower at the centre of the "LuxLeaks" scandal, Antoine Deltour, was an auditor in the Luxembourg office of PricewaterhouseCoopers when he discovered evidence of extensive corporate tax avoidance, endorsed by the Luxembourg government (Whistleblowing International Network, n.d.). His disclosures resulted in international reform of the tax avoidance strategies of many multinational companies. While working as the senior legal adviser for financial services provider Wirecard's Asia-Pacific operations, Pav Gill became aware of the company's accounting malpractices and subsequently blew the whistle, revealing one of the largest corporate frauds in history (Kilby, 2022). Finally, in perhaps the most well-known example of a corporate insider turning whistleblower, US law enforcement leveraged private banker Bradley Birkenfeld's knowledge of UBS Bank's tax evasion activities to achieve billions in tax recoveries, unprecedented criminal indictments and the dismantling of thousands of secret Swiss bank accounts held by US citizens (Kohn, Kohn & Colapinto LLP, 2021).

[1] In addition to the Economic Crime Plan 2: 2023-2026, see also the UK Anti-Corruption Strategy 2017-2022 (HM Government, 2017); Economic Crime Plan: 2019-2022 (HM Government, 2019); Economic Crime (Transparency and Enforcement) Act 2022; and Economic Crime and Corporate Transparency Act 2023.

These examples illustrate why prominent civil society organisations such as Transparency International (2024) view whistleblowers as an integral part of anti-financial crime and corruption efforts. However, the previous examples also illustrate the complexity and controversy that arises when a member of the financial and professional services sectors becomes a whistleblower. Despite Deltour being awarded the European Citizen's Prize by the European Parliament in 2015, one year later he was convicted of disclosing secret documents by a Luxembourg court and sentenced to a 12-month suspended jail sentence (Whistleblowing International Network, n.d.). Lengthy legal battles ensued, until the Luxembourg Court of Appeal affirmed Deltour's status as a whistleblower in 2018 and quashed his conviction (White, 2018). After Gill left Wirecard in 2018, company executives harassed the whistleblower and his family to such an extent that Gill commented in a 2022 interview that he still felt unsafe (Kilby, 2022). As for Birkenfeld, he served two and a half years in prison for abetting tax evasion but was paid a US$104 million reward by the US government in recognition of the value of his information (Kocieniewski, 2012).

The merits and morals of using financial payments to increase insider reporting is a highly contested subject. Since the US implemented the first modern whistleblower reward programme in 1986, it has continued to develop an expanding suite of programmes that have resulted in thousands of successful prosecutions and the recovery of billions of dollars in fines.[2] In subsequent decades, similar schemes have been implemented by countries across North America, Africa and Asia, but many other jurisdictions have strongly resisted following suit.[3] For example, the European Commission in April 2018 adopted a package of broad whistleblowing measures without considering financial incentives (Schmolke, 2021). In Australia, despite the 2017 Parliamentary Joint Committee on Corporations and Financial Services concluding that 'a reward system would motivate whistleblowers to come forward with high quality information' and recommending the implementation of such a scheme (Australian Parliamentary Joint Committee on Corporations and Financial Services, 2017, p. 138), political will to effect the recommendation has stalled.[4]

Another country that has demonstrated a long-held antipathy towards whistleblower reward programmes is the UK. Nevertheless, in the wake of the global financial crisis and subsequent banking scandals, the 2013 UK Parliamentary Commission on Banking Standards recognised the need for 'a significant shift in the cultural attitudes towards whistleblowing' and called for 'research into the impact of financial incentives in the US in encouraging whistleblowing, exposing wrongdoing and promoting integrity and transparency in financial markets' (Schmolke, 2021, p. 376). The regulators of the UK financial services sector, the Financial Conduct Authority (FCA)

[2] For a comprehensive account of the history, development and current status of whistleblower reward programmes in the US, see Kohn (2023).

[3] For more details of international examples of whistleblower reward programmes, see Vandekerckhove et al. (2018, pp. 7-8).

[4] Note that three previous Australian parliamentary inquiries in 1989, 1994 and 2009 had considered and rejected introducing a whistleblower reward programme for ethical and cultural reasons (Australian Parliamentary Joint Committee on Corporations and Financial Services, 2017, p. 137).

and the Prudential Regulation Authority (PRA), responded in 2014, publishing a note in which they outlined their strong opposition to financial incentives for whistleblowers (FCA & PRA, 2014). Their findings encapsulate the arguments that are regularly raised against implementing whistleblower reward programmes, including concerns about the quantity and quality of information received; whether rewards are cost-effective; the creation of perverse incentives such as market participants entrapping one another; rewards undermining internal reporting systems or existing legal duties; and that such programmes only reward a small number of whistleblowers.

Given the increased international interest in offering financial incentives to whistleblowers as part of strategies to combat illicit finance, there is a need to examine the empirical evidence on the effectiveness, viability and results of reward programmes in an economic crime context. This paper seeks to contribute to this knowledge gap by answering two research questions: what are the proven impacts of whistleblower reward programmes that target economic crime; and how can such schemes increase the effectiveness of economic crime investigations? Thus, the paper provides an evidence-based entry-point for policymakers to understand the objectives, design and effects of whistleblower reward programmes, while also offering an original contribution to the international dialogue on how whistleblower rewards could enhance efforts to combat economic crime.

The paper begins by outlining the purpose, potential models and typical phases of a whistleblower reward programme. Second, it examines the design dimensions that can be customised to optimise efficiencies and mitigate unintended consequences. Third, the paper analyses empirical evidence of the impact of reward programmes, and scrutinises whether the claims and concerns that have been raised regarding their implementation have materialised in practice. Fourth, the paper places a reward programme in context by examining its role as a regulatory tool and considering what complementary policy initiatives are necessary for such a programme to operate at maximum efficiency. Finally, the paper concludes with four observations for policymakers to consider when deliberating the role a whistleblower reward programme could play in the fight against economic crime.

# 2. Methodology

The research for this paper was conducted between September 2023 and July 2024. The methodology involved three components:

1) a two-phased literature review, initially comprising a broad range of open-source academic research and, subsequently, a narrow focus on material from the four countries of interest;
2) 39 semi-structured interviews with key stakeholders in Australia, Canada, the UK and the US, either remotely or in person; and
3) following the completion of initial analysis, seven validation exercises with UK policymakers, civil society representatives and whistleblowers.

First, a literature review was conducted of research written in English, identified from online searches of Google Scholar and several journal databases: EBSCO, HeinOnline, JSTOR, ResearchGate, SpringerLink and SSRN. During this initial review, information was collected on countries that either have existing whistleblower reward programmes or are actively debating implementing such schemes. Based on this survey, the US, Canada, Australia and the UK were identified as jurisdictions meriting further investigation because these countries represent advanced, intermediate and beginner experiences with whistleblower reward programmes. Once the countries of interest were selected, a targeted literature review was conducted to identify whistleblowing legislation, policies and grey literature from those countries. The grey literature reviewed included: annual reports from relevant regulators and government agencies; administrative reviews, policy briefs and working papers; and publications by civil society organisations, legal-sector stakeholders and recognised experts.

During the literature review, it became apparent that the scholarship on rewards for economic crime whistleblowers suffers from evidential gaps. Historically, whistleblowing research has sought to understand how individuals rationalise their decision-making processes. Thus, the primary objective has been to identify what individual, situational and environmental factors influence whistleblowers' intentions.[5] Only in the past ten to 15 years has a dedicated academic focus begun to develop on the effectiveness of whistleblower rewards as an anti-illicit finance strategy. Prior to this, the role of whistleblowing as a detection and deterrence mechanism against corruption was 'conspicuously neglected in the literature' (Villena & Villena, 2010, p. 1).[6]

The most likely explanation for this deficiency is that using whistleblower rewards in the global response to economic crime is a relatively new phenomenon. Despite amendments to the False Claims Act in 1986 effectively launching the modern

[5] For an overview of the evolution and scale of whistleblowing scholarship, see Andon et al. (2016, p. 167); Nyreröd & Spagnolo (2021a, p. 249); Smaili & Arroyo (2019, p. 96).

[6] Teichmann (2019, p. 521) also identifies a 'significant research gap' in relation to 'whistleblowing incentives and corruption'.

whistleblowing reward programme in the US, other countries did not follow suit until much later, with the majority of international reward schemes dating from 2010 onwards. Consequently, while robust research evaluating whistleblower rewards as an economic crime-fighting tool has emerged over the past decade; it remains a nascent field of enquiry, heavily dependent on data generated from the US programmes or from experimental, not observational, studies. Furthermore, research on corporate crime whistleblowers is continually hampered by a lack of access to information. Studies involving individuals who have made disclosures are difficult to conduct, as regulators are statutorily bound to protect their whistleblowers, most of whom, understandably, wish to remain anonymous.[7] It is even more challenging to measure reports that are never made, that is, insiders who witness misconduct but decide not to disclose. As a result, even recent scholarship on reward programmes acknowledges that 'what we do not know about whistleblowing dwarfs what we do know' (Rodrigues, 2022, p. 262).

To manage these limitations, the broad literature review began by identifying the different tensions, themes and gaps in the evidence base on economic crime whistleblowers. These observations were then explored during the second methodological component, the interview process. 39 semi-structured interviews were conducted, in person and online, between November 2023 and March 2024. Interview participants included current and former representatives of government agencies, including law enforcement and regulators; stakeholders from civil society and the private sector; and legal practitioners, academics and whistleblowers from Australia, Canada, the UK and the US.[8] Purposive sampling was used to select interviewees based on their experience and expertise with whistleblower reward programmes and, in particular, programmes targeting private sector economic crime.

Finally, the paper's findings were discussed in seven consultations with UK regulators, law enforcement professionals, civil society representatives and whistleblowers. These validation exercises not only strengthened the rigour of the research, but also enabled the findings to be tested by key stakeholders in a country that is currently considering the implementation of an economic crime whistleblower reward programme (Bolton, 2024). How whistleblower rewards can operate effectively as a strategy to combat illicit finance is a field of research that extends well beyond Australia, Canada, the UK and the US. Therefore, although it is anticipated that common law countries will gain the most from this research due to their legal and political similarities with the four countries of interest, the paper's findings are internationally applicable and constitute a valuable contribution to the global debate.

[7] This has led to some whistleblower researchers calling for the US regulators to provide more specific data about their whistleblower reward programmes to academics, on a confidential basis (Austin, 2022, p. 29).

[8] Of the 39 interviews conducted, nine were with current, and three with former, representatives of government agencies; nine with representatives of non-governmental organisations (NGOs), seven with academics; four with whistleblower attorneys; four with representatives from the private sector; and three with whistleblowers.

## 2.1. Definitions and terminology

### *2.1.1. Economic crime*

This paper uses a number of terms interchangeably to refer to economic crime, including financial crime, corporate crime and white-collar crime. This reflects the fact that economic crime is generally understood to be an umbrella term, described in the UK government's Economic Crime Plan (HM Government, 2023, p. 8) as encompassing 'a broad category of activity involving money, finance or assets, the purpose of which is to unlawfully obtain a profit or advantage for the perpetrator or cause loss to others'. Examples of economic crime include 'fraud, money laundering, sanctions evasion and corruption' (HM Government, 2023, p. 4).

Intrinsic to the concept of economic crime is the role of professional enablers. This term describes providers of financial and professional services who engineer the structures necessary to facilitate illicit financial flows (OECD, 2021). Recent financial scandals have focused public and policy attention on the integral role private sector insiders can play in exposing high-value, multi-jurisdictional money-laundering and tax evasion schemes. In response, international whistleblower reward programmes are increasingly designed to incentivise professional enablers to disclose information on white-collar crimes that are occurring within their professions. In light of this context, this paper uses the term economic crime to refer to illicit financial activity occurring in the private sector. Thus, consideration of whistleblowing in the public sector is excluded from the ambit of this research.[9]

### *2.1.2. Whistleblower*

It is important to acknowledge that the terminology used to refer to whistleblowers can be a contentious and often emotive subject. Some people wear the label of whistleblower with pride, whereas others reject it due to perceived negative connotations. After careful consideration, this paper uses the term whistleblower not only because of a lack of consensus on alternatives,[10] but also because whistleblower is widely understood to describe a person who 'exposes wrongdoing to parties who may be able to effect action' (Near & Miceli, 1995). However, given that the purpose of this paper is to examine the impact and viability of financial payments to whistleblowers as an anti-economic crime strategy within the financial and professional services sectors, the definition of whistleblower has been narrowed to refer to a person who reports evidence of economic crime, as defined above.

[9] This choice is not intended to diminish the vital importance of public sector whistleblowers, the critical need to protect the public purse from fraud, or the reality that the costs of private sector economic crime are often ultimately borne by the public. However, research that examines how a reward programme would impact the specific motivations, employment circumstances, legal duties and professional obligations of public sector whistleblowers would require a different methodology than research focused on private sector whistleblowers.

[10] Some North American and Asian jurisdictions use "informant" or "informers", although this has strong negative implications in Europe where those terms have been associated with totalitarian regimes that required citizens to report on one another. The term "upstander" has been suggested as an alternative (in contrast to "bystander"), but this has not received widespread recognition.

### *2.1.3. Reward programme*

The terminology used to describe programmes that provide financial payments to whistleblowers has been another source of controversy, with a wide range of terms routinely used interchangeably, including “rewards”, “awards”, “incentivisation schemes” and “bounty regimes”. Rewards have also been referred to as forms of “compensation” or “restitution”. However, those terms have specific legal definitions that do not accurately reflect the nature of whistleblower reward programmes. As section 6 explains, erroneously conflating a reward programme with a compensation or restitution scheme mischaracterises its scope and can create unrealistic expectations. Similarly, the term “bounty” does not accurately reflect the purpose, operation and impact of these programmes and, while prevalent a decade ago, has largely fallen out of use in recent scholarship. The programmes in North America (referring here to the US and Canada) tend to favour “award” or “incentivisation”. However, as the primary audience for this paper are policymakers in countries that lack experience with whistleblower payments, it was felt that “reward” would have universal recognition. Therefore, this paper uses the term “reward programme” to refer to financial payments made by government regulators to whistleblowers.

# 3. How does a reward programme work?

Before undertaking analysis of the impact of whistleblower reward programmes and their potential to increase the effectiveness of economic crime investigations, it is essential to understand their rationale, format and operation. This section provides an overview of the purpose and models of whistleblower reward programmes, before explaining the typical phases of a cash-for-information scheme.

## 3.1. Purpose and models

Under a whistleblower reward programme, a regulator provides a monetary payment to individuals who report information on prohibited behaviour, if that information assisted the relevant authority to investigate and financially recover assets linked to the illicit activity. The purpose of such schemes is to boost the amount of actionable information reported to law enforcement, increasing the successful punishment of perpetrators, and sending a message that the risks of engaging in corrupt practices outweigh the potential benefits. Thus, reward programmes are principally designed to optimise regulatory effectiveness by improving the detection and deterrence of economic crime. There are generally three types of whistleblower reward programmes in existence internationally: a private regulator model; a cash-for-information model; and discretionary awards.

### *3.1.1. Private regulator model*

The legal framework for financially rewarding individuals who report incidents of corruption first emerged in medieval England in the form of *qui tam* actions.[11] Faced with limited law enforcement resources, early *qui tam* provisions sought to preserve the integrity of trade and commerce by incentivising citizens to report the corrupt conduct of public officials and merchants.[12] A *qui tam* action does this by allowing a private citizen to step into the shoes of a regulator and pursue legal action on behalf of the government, thus enabling an individual to become a private regulator. In return, the whistleblower is entitled to a generous percentage of any financial recovery. *Qui tam* actions existed under English common law for six centuries, but as law enforcement became increasingly professionalised and *qui tam* actions gained a

[11] The term '*qui tam*' originates from the Latin phrase '*qui tam pro domino rege, quam pro se ipso in hac parte sequitur*', which translates as '[he] who sues on behalf of the King, as well as for himself' (Vandekerckhove et al., 2018, p. 27).

[12] Examples include the 1318 Statute of York, 1328 Statute of Nottingham and 1350 Statute of Cloths, under which whistleblowers could bring actions, on behalf of the Crown, against merchants who were not compliant with regulatory requirements regarding the price of wine, length of fairs and sale of cloth, respectively (Beck, 2000).

reputation for encouraging extortion through secret settlements, Parliament eventually abolished them in 1951 (Beck, 2000, p. 548).

Despite its abandonment in the UK, the private regulator model of whistleblower rewards continues in the US. Implemented by President Abraham Lincoln in 1863, *qui tam* actions were initially intended to encourage the reporting of fraudulent military procurement during the American Civil War (Kohn, 2023, p. 106). The concept has undergone several iterations in the US over the centuries and its current form is the result of significant legislative amendments that were passed in 1986. Administered by the Department of Justice (DOJ), the modern False Claims Act is considered the flagship whistleblower reward programme, enabling citizens to sue in the name of the US government where they have evidence of fraud against the government. Between 1986 and 2022, *qui tam* actions filed by citizens recovered in excess of US$50 billion, with whistleblowers being paid over US$7 billion for their contributions (Pietragallo Gordon Alfano Bosick & Raspanti, LLP, 2024).

Despite the success of *qui tam* actions in the US, the private regulator model has not been adopted internationally. Instead, countries that opt to financially reward whistleblowers have overwhelmingly chosen to do so by implementing cash-for-information schemes. Thus, the cash-for-information model is the type of whistleblower reward programme that is the focus of this paper.

### *3.1.2. Cash-for-information model*

A cash-for-information reward programme is similar to a *qui tam* action in that it involves the regulator paying a whistleblower a percentage of monetary sanctions recovered via an enforcement action that used the whistleblower's information. However, unlike the *qui tam* model, under a cash-for-information scheme the regulator retains full control over the decision to initiate an enforcement action and any subsequent legal proceedings.

The US has a prolific portfolio of cash-for-information schemes, operated by numerous regulators, which are designed to incentivise whistleblowers to report a diverse range of illicit activities, in areas from motor vehicle safety to illegal wildlife trafficking. However, four reward programmes specifically target economic crime whistleblowers. An Internal Revenue Service (IRS) programme was established in 2006 via amendments to tax informant laws; the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) programmes were both enacted under the Dodd-Frank Act of 2010; and an anti-money laundering and sanctions whistleblower programme was created in 2021, to be administered by the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). These initiatives reward whistleblowers whose information results in a successful enforcement action against a wide range of financial misconduct, including tax law violations, foreign bribery and corruption, securities and commodities malfeasance, cryptocurrency fraud, money laundering and sanctions evasion. Additionally, the DOJ in March 2024 announced it was launching a new whistleblower reward programme to 'discover significant corporate or financial misconduct' (DOJ, 2024).

The US cash-for-information programmes have become internationally renowned due to their successful recovery of large sanctions, substantial payouts to whistleblowers and extensive extraterritorial reach, which has resulted in them receiving information from whistleblowers all over the world.[13] Canada and the UK consistently rank first and second in the list of countries from which the SEC receives the highest number of whistleblower submissions (SEC 2023, p. 6; 2022, p. 6; 2021, pp. 38-39; 2020, pp. 41-42). The fact that US regulators are consistently benefiting from information provided by Canadian and UK citizens has fuelled debate within these jurisdictions about the merits of adopting a similar whistleblower reward policy.

The first Canadian cash-for-information scheme was introduced in 2014 by the Canada Revenue Agency (CRA), under the Offshore Tax Informant Program, to reward whistleblowers who report incidents of 'major international tax evasion and aggressive tax avoidance' (CRA, 2024). Subsequently, several of the provincial securities regulators considered financially rewarding whistleblowers.[14] Eventually, whereas the Quebec and Alberta regulators rejected the idea, the Ontario Securities Commission (OSC) introduced a whistleblower reward programme in 2016.[15]

Two cash-for-information programmes currently exist in the UK, but little is publicly disclosed about their operation or outcomes. HM Revenue and Customs (HMRC) has had the ability to financially reward whistleblowers who report tax fraud since 2005.[16] However, the rewards are not reported in HMRC's annual accounts and HMRC does not comment on or publicise such payments except in response to freedom of information (FOI) requests and correspondence with members of Parliament (Smith, 2019). From these limited sources of information it is understood that HMRC paid out £509,000 to whistleblowers in financial year 2022/23, up from £495,000 in financial year 2021/22 and an increase of 75% from £290,00 paid five years ago (Nanson, 2023).

The UK Office of Fair Trading, now the Competition and Markets Authority (CMA), in 2008 began offering financial rewards to whistleblowers who reported information about anti-competitive activities.[17] The CMA is more transparent about its programme than HMRC, with publicly available guidance explaining that up to £250,000 may be

[13] Indeed, international whistleblowers appear to have a higher chance of being rewarded under the US Securities and Exchange Commission (SEC) reward programme than US citizens. In 2021, tips received from outside the US represented 11% of all the information received by the SEC, yet non-US nationals represented approximately 20% of reward recipients (Karpacheva & Hock, 2023, p. 10).

[14] Note that Canada does not have a national securities regulator, so each of the Canadian Provinces and Territories has its own regulator responsible for enforcing their respective securities legislation.

[15] This is perhaps unsurprising, given that Ontario is home to the largest securities exchange in Canada and Ontario-based issues comprise the majority of Canada's equity market value (Austin, 2020, p. 73).

[16] Section 26 of the Commissioners for Revenue and Customs Act (2005) 'gives the Commissioners for HMRC a discretionary power to pay rewards for service to them or their officers by any person'.

[17] It should be noted that cartel reward programmes are slightly different from economic crime whistleblowing reward programmes, as the former tend to be part of wider immunity and leniency programmes. However, they still provide cash in exchange for information, which is why the Competition and Markets Authority (CMA) programme has been included here.

rewarded for 'inside information about the existence of a cartel' (CMA, 2014), although like HMRC, the CMA does not publish statistics on the rewards it has paid.

#### *3.1.3. Discretionary awards*

The final reward programme model is that of discretionary awards. The key difference between this model and the former ones is that the regulator has discretion to financially reward a whistleblower for information that has not resulted in a successful prosecution. One example exists in the Republic of Korea where, in addition to cash-for-information programmes for tax evasion and corruption, the Anti-Corruption & Civil Rights Commission can pay a whistleblower an award not exceeding approximately US$391,000 for information that generated financial gain or prevented losses to the government (Choi, 2023).

This model has not been widely implemented, so will not be considered further in this paper. However, it is relevant to note that senior government officials within North American whistleblower programmes interviewed for this project commented that they would welcome the opportunity to expand their current reward programmes to include discretionary awards. Some interviewees felt that it would further the objectives of their government agencies if they could reward whistleblowers whose information had not resulted in financial recovery but had nonetheless proved valuable to economic crime investigations.[18]

## 3.2. Phases of a cash-for-information programme

A typical cash-for-information programme involves six phases, as visualised in Figure 1. First, after becoming aware of illicit activity and deciding to report, the whistleblower makes a disclosure. This is done either through internal channels, if their employer provides such processes, or via external channels, which can involve engaging legal counsel or directly approaching the relevant regulator. It is increasingly common for whistleblowers reporting under North American programmes to employ a whistleblower attorney, which provides benefits to both the whistleblower and regulator. Being represented by legal counsel allows whistleblowers to disclose information to the regulator anonymously, and attorneys assist the whistleblowers in navigating often complex reporting processes. Moreover, as whistleblower attorneys are generally retained on a contingency fee basis, they are financially incentivised to present comprehensive, verified and well-organised information to regulators.

Second, the whistleblower information is triaged by an Office of the Whistleblower (OWB). An OWB is a team of legal, accounting and intelligence professionals, embedded within the relevant regulator or law enforcement agency. An OWB is responsible for administering all aspects of the whistleblower reward programme

[18] Research interviews: Representative of government agency 7 (13 February 2024); Representative of government agency 8 (14 February 2024); Representative of government agency 9 (8 March 2024).

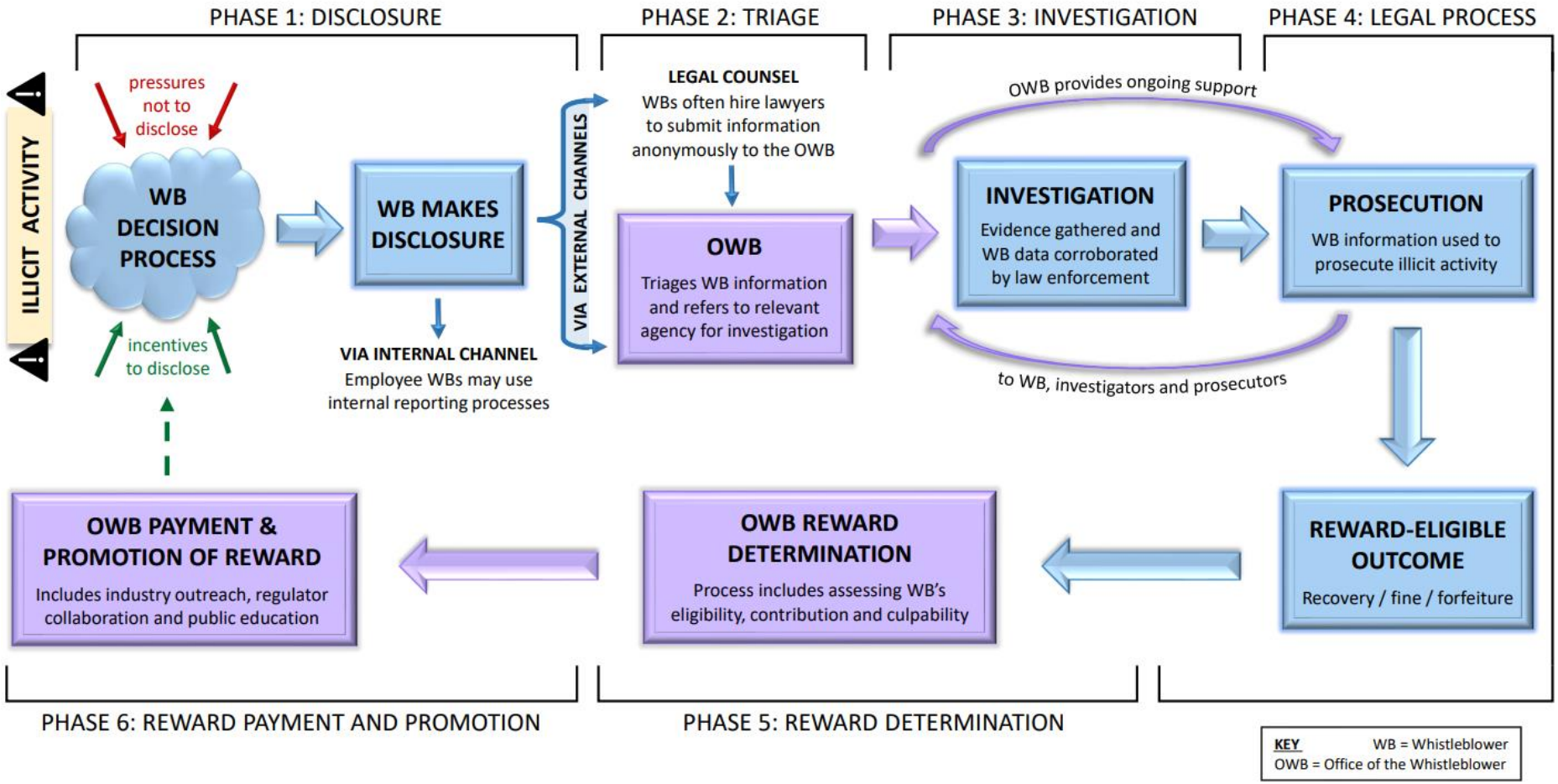
and, as this summary demonstrates, its integration into every phase is critical to a programme's ability to function. In the triaging phase, the OWB conducts a preliminary assessment of a whistleblower's disclosure and refers any information worth pursuing to the appropriate law enforcement agencies, both domestic and international.

Once information has been referred to law enforcement, their investigation comprises the third phase. Depending on the nature of the information, it could trigger a new inquiry or be folded into an existing operation. The enforcement team will work to corroborate the veracity of the disclosure and the whistleblower may be approached to provide ongoing assistance. If the investigation substantiates behaviour that warrants prosecution, the fourth phase involves the consequent legal action during which the OWB provides support to the whistleblower, investigators and prosecutors. An interviewee described the role of the OWB throughout the third and fourth phases as being an advocate for both the whistleblower and law enforcement, in that the OWB highlights to law enforcement the potential value the whistleblower can add, and works with the whistleblower to elicit the type of information the investigators need.[19]

If the legal proceedings result in the recovery of funds, the fifth phase involves the OWB assessing the whistleblower's eligibility to receive a reward. The size of the reward is determined by a multifactorial assessment of the whistleblower's contribution to the investigation and their level of complicity in the illicit activity. After a whistleblower reward is paid, the final phase involves publicity and outreach efforts by the OWB, designed to educate the private sector, other government agencies and the public about the programme and whistleblowing more generally. These engagement activities bring the role of the OWB full circle; research has found that increased public awareness of rewards positively influences whistleblowers' intention to report (Chang et al., 2017, p. 23), as well as being an indicator of a programme's deterrent effect (Cordis & Lambert, 2017, p. 296).

[19] Research interview: Representative of government agency 9 (8 March 2024).

## Figure 1: Phases of a typical cash-for-information programme




Source: Author's own.

# 4. Design dimensions

Designing a cash-for-information scheme involves a number of choices that determine the parameters of the programme's operation. These dimensions can be calibrated to suit the needs of the regulator; the illicit behaviour being targeted; the whistleblower to be incentivised; and the legal, institutional and cultural context of the jurisdiction. This customisation process is critical to achieving an effective balance between the intended and unintended consequences that can result from implementing a reward programme. This section outlines the key categories of design dimensions and the objectives they seek to achieve, with a summary provided in a table at the end.

## 4.1. Eligible information

The first decision to be made when designing a reward programme is to determine the scope of information it aims to attract – in other words, what type of illicit activities does the programme want to detect? This can be complicated by the fact that economic crime tends to involve a series of interconnected financial transactions that fall under the purview of numerous regulators. For instance, both the SEC and CFTC accept whistleblower disclosures in relation to investment, securities and commodities fraud. How to manage this overlap in regulatory jurisdictions must be considered early in the design process. An example of this can be seen in the scope of the OSC's whistleblower programme. In adapting the SEC's model to suit the Canadian context, the OSC decided to accept information on serious securities misconduct but to exclude information related to criminal or quasi-criminal matters (OSC, 2022). These excluded matters are pursued under a separate mechanism of Ontario's securities legislation (Davis et al., 2020, p. 7).

Once it has been determined what type of legal violation whistleblowers will be incentivised to report, the form of information accepted under the reward programme must be specified. The majority of international cash-for-information schemes require whistleblowers to *voluntarily* submit *original* information in relation to violations that fall within the scope of the programme. Information will be considered to have been voluntarily submitted if it has been provided to the regulator before a whistleblower was requested or compelled to do so; for instance, prior to the whistleblower being investigated or subpoenaed in legal proceedings.[20] Additionally, information is not considered voluntary if the whistleblower is under a pre-existing legal duty to report the information to a regulatory or law enforcement agency.[21]

[20] Commodity Futures Trading Commission (CFTC) Whistleblower Rules § 165.2(o)(1) (2011); Ontario Securities Commission (OSC) Policy 15-601 Whistleblower Program § 1 (2022); SEC Securities Whistleblower Incentives and Protections § 240.21F-4(a)(1) (2020).

[21] CFTC Whistleblower Rules § 165.2(o)(2) (2011); OSC Policy 15-601 Whistleblower Program § 1 (2022); SEC Securities Whistleblower Incentives and Protections § 240.21F-4(a)(3) (2020).

Original information is defined as information not already known to the regulator, which the whistleblower derived from their 'independent knowledge' or 'independent analysis'.[22] This means the information is not publicly available, or the whistleblower has undertaken an evaluation of publicly available data that has revealed information not generally known. However, information will not be considered eligible for a reward if it is subject to legal professional privilege, obtained in violation of criminal law, or if the whistleblower occupied a certain position within their organisation, such as a director, auditor or compliance officer, and learned of the information through internal reporting systems.[23] The voluntary and original information requirements are designed to incentivise the reporting of new information, while preventing the provision of rewards undermining existing investigations or legal duties. Furthermore, to deter frivolous or malicious claims, the SEC and CFTC require whistleblowers or their attorneys to submit information under penalty of perjury; the OSC programme includes an offence for submitting misleading or untrue information.[24]

During the development of the North American programmes, the professional and financial services sectors heavily lobbied for it to be mandatory for whistleblowers to use internal reporting systems before their information is eligible for a reward (Schmolke, 2021, p. 10).[25] The potential for an external reward scheme to weaken internal compliance processes is an important design consideration because such a result would be counterproductive for both companies and regulators. However, North American policymakers resisted making internal reporting a precondition for a reward because this could endanger whistleblowers, particularly in cases of economic crime where internal processes may require them to disclose to people they believe to be corrupt. Such a requirement could also result in corporations developing substandard internal reporting frameworks, if they did not feel the pressure of potential external exposure (Engstrom, 2018). To balance these competing interests, North American reward programmes are designed to incentivise, but not mandate, internal reporting and encourage companies to appropriately manage whistleblower claims by offering whistleblowers a higher reward if they report internally first.[26]

[22] CFTC Whistleblower Rules § 165.2(k)(1) (2011); OSC Policy 15-601 Whistleblower Program § 1 (2020); SEC Securities Whistleblower Incentives and Protections § 240.21F-4(b)(1) (2020).

[23] CFTC Whistleblower Rules § 165.2(g) (2011); OSC Policy 15-601 Whistleblower Program § 1 and 15 (2020); SEC Securities Whistleblower Incentives and Protections § 240.21F-4(b)(4) (2020).

[24] CFTC Whistleblower Rules § 165.3(b) (2011); OSC Policy 15-601 Whistleblower Program § 2 (2022); SEC Securities Whistleblower Incentives and Protections § 240.21F-9 (2020).

[25] This point was also debated in the 2017 Australian Parliamentary Joint Committee into whistleblower rewards (Australian Parliamentary Joint Committee on Corporations and Financial Services, 2017).

[26] CFTC Whistleblower Rules § 165.9(b) (2011); OSC Policy 15-601 Whistleblower Program § 25 (2022); SEC Securities Whistleblower Incentives and Protections § 240.21F-6(a) (2020).

## 4.2. Recovery threshold

A whistleblower's information must lead to a successful enforcement action before they are eligible for a reward. Moreover, most cash-for-information programmes impose a recovery threshold that requires an enforcement action to recoup a minimum amount of funds before a whistleblower can be rewarded. This is intended to enhance the cost-effectiveness of the programme by incentivising whistleblowers to come forward with information on significant violations. Under North American programmes, at least 1 million in the relevant currency must be recovered before a whistleblower reward will be available.[27] Thus, inherent in the imposition of a recovery threshold is the need for the relevant legal violation to incur sufficiently large monetary penalties. It is important to consider this limitation during the design process as many countries, such as Australia and the UK, have much lower penalties for corporate wrongdoing than the US. Therefore, it may be necessary to consider legislative amendments to introduce higher fines for the relevant legal violations before a cash-for-information scheme can be implemented.

## 4.3. Size of reward

How a cash-for-information scheme calculates the reward amount is the most customisable element of a programme because it involves numerous adjustable metrics. Policymakers can use these design dimensions to exert a sophisticated level of control over how rewards are calculated. First, cash-for-information schemes express the size of the reward as a percentage of the financial revenue the regulator recovers as a result of the whistleblower's information. The minimum and maximum percentages set as the range of the reward base will determine the potential size of whistleblower payments. Furthermore, a design choice can be made to override the maximum percentage, capping rewards at a particular amount. These controls provide a level of certainty for whistleblowers and allow them to enter into contingency agreements for legal representation.

The US programmes have the potential to produce large-scale rewards because the reward range is set at 10% to 30% of the recovered funds and the maximum amount a whistleblower can be paid is not capped.[28] By contrast, under the OSC's reward programme, a whistleblower's potential recovery is limited to between 5% and 15%, and any potential reward is capped at CA$5 million.[29] The top five whistleblower payments made under the US programmes in 2023 amounted to more than US$510

[27] CFTC Whistleblower Rules § 165.2(e) (2011); OSC Policy 15-601 Whistleblower Program § 1 (2022); SEC Securities Whistleblower Incentives and Protections § 240.21F-10 (2020).

[28] Under the SEC, CFTC and Financial Crimes Enforcement Network (FinCEN) whistleblower reward programmes, the range of reward recovery is 10% to 30%; under the Internal Revenue Service (IRS) reward programme, the range is 15% to 30%. Moreover, in response to criticism that reward determinations were often delayed, the SEC in 2020 introduced a presumption that a whistleblower would be awarded the maximum of 30% if the reward was US$5 million or less, and none of the negative factors were present (SEC Securities Whistleblower Incentives and Protections § 240.21F-6(c) (2020)).

[29] OSC Policy 15-601 Whistleblower Program § 18 (2022).

million, with one whistleblower receiving US$279 million from the SEC, the largest reward ever made (Constantine Cannon, 2024). Despite these large payments frequently making headlines, academics estimate that around 75% of whistleblower rewards paid under the US programmes have been worth US$5 million or less (Nyreröd & Spagnolo, 2021a, p. 250).

The exact percentage a whistleblower is paid within the reward base range is determined by an individualised review of the whistleblower's information, contribution and complicity. North American programmes use an extensive menu of factors that fall into two categories: positive factors that may increase, and negative factors that may decrease, the amount of reward. Positive factors can include the: timeliness of the whistleblower's report; significance of the information (including its value, veracity and specificity); interest of law enforcement in deterring the reported violation; degree of assistance provided by the whistleblower; whistleblower's participation in internal compliance systems; and any unique hardship the whistleblower experienced. Negative factors often include where the whistleblower: unreasonably delayed reporting information; provided erroneous or incomplete information; refused to provide additional information or assistance to the regulator; and interfered with internal compliance mechanisms or the regulatory investigation. Full details of these factors under the SEC, CFTC and OSC schemes are provided in the Appendix.

Culpable whistleblowers are not automatically excluded from receiving a reward; however, their level of involvement will be examined. Relevant considerations may include: the degree of complicity; the egregiousness of the whistleblower's behaviour; the whistleblower's education, training, experience and position of responsibility at the time; and if the whistleblower financially benefited from the violations.[30] This assessment has been summarised as the difference between 'participants' and 'architects' of an illicit enterprise, with only the former being eligible for a financial reward (Zirnsak, 2017). Furthermore, submitting information to a reward programme does not give whistleblowers immunity from prosecution. Regulators retain the right to pursue legal action against culpable whistleblowers and, if convicted, whistleblowers are disqualified from receiving a reward.[31]

## 4.4. Right of appeal

A design decision can be made as to the availability of judicial review for reward determinations made by the OWB. In Canada, whistleblowers cannot contest reward decisions.[32] Under US programmes, a whistleblower who receives a payment is unable to contest the reward percentage, but whistleblowers can appeal if a decision is made

[30] This is an amalgamation of the whistleblower culpability factors under the SEC, CFTC and OSC schemes; for full details, see Appendix.

[31] CFTC Whistleblower Rules § 165.6(a)(2) (2011); OSC Policy 15-601 Whistleblower Program § 15(1)(l) (2022); SEC Securities Whistleblower Incentives and Protections § 240.21F-8(c)(3) (2020).

[32] OSC Policy 15-601 Whistleblower Program § 26 (2022).

not to pay them a reward.[33] This design divergence most likely stems from how whistleblowers come to be considered for a reward under US programmes versus the Canadian scheme. In the US, once legal proceedings result in financial recovery, the relevant regulator will post a Notice of Covered Action on their website. A whistleblower who believes their information contributed to that action has 90 days to apply to the OWB if they wish to be considered for a reward.[34] This administrative process lends itself to judicial review and has most likely evolved as a method to manage the large number of whistleblower tips the US regulators receive each year – if a whistleblower does not apply for a reward, the regulator is not required to seek them out. However, this design choice also elevates the need for strict information eligibility requirements to deter individuals from making unmeritorious claims for a reward. By contrast, the OSC will contact a whistleblower directly once a matter involving their information concludes in a reward-eligible outcome (OSC, 2023, p.5). This reflects the smaller scale of the Canadian programme and a right of appeal in these circumstances could create an unnecessary drain on the regulator's limited resources.

## 4.5. Eligible whistleblowers

The final and most fundamental design dimension is to determine who qualifies as a whistleblower. A striking feature of international reward programmes is their adoption of 'a wider view of whistleblowing which considers disclosures made by insiders and outsiders' (Smaili & Arroyo, 2019, p. 98). Historically, whistleblower frameworks have applied a narrow employment law lens, only protecting those who report misconduct perpetrated by their current or former employer, but North American programmes require no such relationship. As long as an individual meets the information eligibility requirements, they are considered a whistleblower. This represents a fundamental shift in the understanding of what it means to be a whistleblower and it has powerful ramifications. By redefining a whistleblower as anyone with pertinent evidence, the focus moves from the integrity of the person to the veracity of the information. Instead of scrutinising the motivations and employment record of the individual, it is the utility of the information that is considered paramount.

A framework that views whistleblowers, first and foremost, as sources of intelligence is particularly appropriate when designing strategies to increase the effectiveness of economic crime investigations. Due to the inherently opaque nature of illicit financial activities, regulators and law enforcement are constantly at an informational disadvantage. Herbert Edelhertz, former chief of the DOJ's Criminal Division, eloquently described the investigation of white-collar crime as 'an exercise which can only be compared to an archaeological excavation – the tombs are carefully hidden and constructed with fake passages and antechambers to divert the search. The search itself is so laborious and complex an effort that it can easily destroy the trail it

[33] CFTC Whistleblower Rules § 165.13 (2011); SEC Securities Whistleblower Incentives and Protections § 240.21F-13 (2020).

[34] CFTC Whistleblower Rules § 165.7(a) (2011); SEC Securities Whistleblower Incentives and Protections § 240.21F-10(a) (2020).

seeks to follow' (Kohn, 2023, p. 280). Rather than arduously investigating cold financial trails, whistleblower intelligence can give law enforcement "the inside track", facilitating real-time investigations and enabling the targeted deployment of covert techniques. All 12 current and former representatives of government agencies interviewed for this project agreed they would welcome any mechanism that increased the speed and efficiency of economic crime investigations.[35]

The benefit of casting a wide net for eligible economic crime whistleblowers is evidenced by Dyck et al.'s (2010) seminal research, which analysed 216 cases of corporate fraud by US companies. The authors conclude that 'fraud detection relies on a wide range of (often improbable) actors' and that no single whistleblower typology was responsible for the detection of more than 20% of the fraud cases studied (Dyck et al., 2010, p. 2250). The diverse range of whistleblower types identified included employees, industry regulators, auditors, financial analysts, investors and equity holders, law firms, clients, competitors and journalists. These findings were validated by the OSC's 2023 review of its whistleblower reward programme, which commented that the majority of reward recipients did not hold an internal role: 'rather, they were familiar with the industry or the company, or had skills that enabled them to analyze information to draw out helpful insights' (OSC, 2023, p. 5).

Under this broader view of whistleblowing, rewards take on a new significance. Instead of being considered exclusively as a means to incentivise individuals, rewards constitute societal recognition of the public interest value of whistleblowing, and demonstrate that policymakers consider the eradication of economic crime an objective meriting financial investment. However, it may be challenging to facilitate this conceptual transition within countries such as the UK and Australia, which have historically opposed implementing cash-for-information schemes due to cultural norms against financially rewarding whistleblowers. Some academics argue that the mere introduction of a cash-for-information scheme can change negative perceptions of rewards, citing as an example the enactment of the UK Public Interest Disclosure Act (1998), which raised social awareness and improved attitudes towards whistleblowing in the UK (Fleischer & Schmolke, 2012, p. 12; Kafteranis, 2019, pp. 42-43; Schmolke, 2021, pp. 19-20).[36] Recent high-profile financial scandals, and the central role whistleblowers have played in their exposure, also appear to be increasing global acceptance of rewards as a legitimate regulatory tool to fight

[35] Research interviews: Representative of government agency 1 (19 December 2023); Representative of government agency 2 (19 December 2023); Representative of government agency 3 (19 December 2023); Representative of government agency 4 (25 January 2024); Representative of government agency 5 (25 January 2024); Representative of government agency 6 (9 February 2024); Representative of government agency 7 (13 February 2024); Representative of government agency 8 (14 February 2024); Representative of government agency 9 (8 March 2024); Former representative of government agency 1 (7 December 2023); Former representative of government agency 2 (15 February 2024); Former representative of government agency 3 (20 February 2024).

[36] Arguably, these initial positive impacts have been undermined over time, as academics contend that the UK Public Interest Disclosure Act (1998) is no longer fit for purpose because it lacks the capacity to adequately protect and compensate whistleblowers; see Adeyemo (2020). Additionally, as the Act only protects employees reporting against their employer, it continues to entrench the idea that whistleblowing is exclusively an employment law issue.

economic crime (Hazell, 2023; Ring, 2024). Nevertheless, the cultural background of a country must be given due consideration during the design process, as evidence suggests that an internationally uniform approach to reward design and implementation would be ineffective (Lee et al., 2020, p. 554).

### Table 1: Design dimensions summary

| Category | Detail | Objective |
|---|---|---|
| Eligible information | A reward will only be available for information relating to specific violations. | Rewards can be used to detect, and therefore deter, a specific type of behaviour. |
| | Information must be submitted voluntarily; that is, a whistleblower must not have been requested, compelled or under a legal duty to make a disclosure. | Prevents the provision of rewards undermining existing investigations or legal duties. |
| | Information must be original; that is, derived from a whistleblower's independent knowledge or analysis and not subject to legal professional privilege, obtained in violation of criminal law or known by the whistleblower due to their supervision of internal reporting systems. | Incentivises the reporting of new information and prevents a breach of existing duties. |
| | Whistleblower information is submitted under penalty of perjury or the programme imposes penalties for information that is false, frivolous or incomplete. | Deters frivolous or malicious claims. |
| Recovery threshold | Information must lead to successful enforcement, which recovers a minimum amount of funds, before a whistleblower can be rewarded. | Enhances cost-effectiveness by attracting information related to high-value violations. |
| Size of reward | The maximum reward amount can be capped. | Limits the maximum amount that can be awarded. |
| | The programme will set a minimum and a maximum percentage of the amount recovered that can be paid to a whistleblower as a reward. | Creates consistent expectations of reward amounts, which enables whistleblowers to access legal representation. |
| | The exact reward percentage is determined by a multifactorial assessment of a whistleblower's information, contribution and complicity. This includes any delay in reporting, whether a whistleblower participated with internal compliance systems and, if culpable, the extent of a whistleblower's participation. | Addresses concerns that rewards could create perverse incentives and undermine internal compliance systems.<br>Also mitigates egregious whistleblower behaviour. |
| Right of appeal | A programme can choose whether to make judicial review available for whistleblower reward determinations. | Programmes can be customised to suit the needs of the jurisdiction. |
| Eligible whistleblower | If an individual meets the information eligibility requirements, they will be considered a whistleblower. An employment relationship does not need to be established. | Creates a cultural change towards viewing whistleblowers as sources of intelligence. |
| | The reward programme does not confer immunity. A whistleblower who is convicted of a criminal offence associated with their information is ineligible for a reward. | Law enforcement retains the discretion to prosecute culpable whistleblowers. Convicted whistleblowers cannot be financially rewarded. |

# 5. Impact of rewards

The previous section highlights the nuanced tensions and trade-offs inherent in the various design dimensions of cash-for-information schemes. This section examines how these design choices operate in practice by analysing the key intended and unintended consequences of North American reward programmes. The main arguments against such schemes were outlined in a 2014 publication by the UK financial services regulators, the FCA and PRA. The critiques made by these agencies are not unique to the UK; similar concerns have been debated in most countries considering the adoption of rewards. Therefore, this section will use the arguments made by the FCA and PRA (2014) as a framework to assess whether the concerns often raised about reward programmes have materialised in reality.

## 5.1. A cost-effective increase in information?

The first argument that tends to be raised against implementing a cash-for-information scheme is that rewards are 'unlikely to increase the number or quality of the disclosures' (FCA & PRA, 2014).[37] In respect of the quantity criticism, evidence clearly demonstrates that reward programmes substantially increase numbers of whistleblower disclosures. Statistics from North American regulators show an exponential growth of information submitted under their reward programmes. For fiscal year 2023, the SEC received 18,354 tips and the CFTC 1,530 – a record for both regulators and an increase of almost 50% on the number of whistleblower submissions received in previous years.[38] As of March 2022, the OSC reward programme had received 797 whistleblower tips since its first fiscal year in 2018, with an average annual increase in tips of 17% (OSC, 2023, p. 7). These numbers are supported by extensive academic research, which has found that financial incentives increase whistleblowers' intention of reporting.[39] While these statistics establish that rewards are highly effective at incentivising individuals to use the whistleblower programme, an increased rate of reporting *by itself* does not indicate whether there has been a corresponding increase in the quality of information.

### *5.1.1. Quality of information*

The potential for reward programmes to swamp regulators with mediocre information was a concern often raised in the literature from the early 2010s. Scholars predicted that whistleblowers would adopt a 'lottery mentality' and rush to submit 'unreliable

[37] This point was also debated in the 2017 Australian Parliamentary Joint Committee into whistleblower rewards (Australian Parliamentary Joint Committee on Corporations and Financial Services, 2017).

[38] The SEC received 12,322 tips in fiscal year 2022 (SEC, 2022, p. 1); the CFTC received 1,506 tips in fiscal year 2022, up from 961 tips in fiscal year 2021 (CFTC, 2022, p. 6).

[39] For an overview of this scholarship, see Franke et al. (2016, p. 4); Gaydon & Boyle (2023, p. 388); and Nyreröd & Spagnolo (2019, p. 4).

and frivolous claims … in the hopes of striking gold' (Blount & Markel, 2012, p. 1041), thus creating 'a flood of poor-quality tips' (Ebersole, 2011, p. 135). The six current and former representatives of North American government agencies interviewed for this project acknowledged that a reward programme inevitably triggers an increase in information of varying quality, necessitating the judicious use of design controls.[40] These measures include the previously mentioned information eligibility requirements and recovery thresholds, designed to only allow disclosures of original information related to high-value violations, as well as the creation of specific offences to deter the submission of false, fraudulent or incomplete claims.

It appears that the management of unmeritorious submissions remains an ongoing concern, as evidenced by the fact that in 2020 the SEC introduced a 'permanent bar' from the programme for individuals who submit more than three frivolous reward applications.[41] Nevertheless, the current and former representatives of North American government agencies interviewed were keen to emphasise that financially incentivised whistleblowers had delivered groundbreaking information.[42] One senior US government official described some of the whistleblowers they had worked with as providing 'an insider's manual' for complex and otherwise undetectable illicit activities.[43] A senior Canadian government official described these 'diamond-tier whistleblowers' as being well worth the effort involved in managing less valuable submissions.[44] These sentiments echo the words of former SEC Chair Mary Jo White, who described the SEC reward programme as 'a tremendously effective force-multiplier, generating high quality tips and, in some cases, virtual blueprints laying out an entire enterprise' (SEC, 2013). Similarly, the former OSC Director of Enforcement, Jeff Kehoe, commented that 'the OSC created the Whistleblower Program to identify complex or hard-to-detect securities violations. It has proven to be a resounding success … evidenced by our numerous investigations involving whistleblower tips' (OSC, 2023).

It could be expected that regulators would sing the praises of their own initiatives, but their assertions are supported by a recent Harvard Business School study. Academics found that 'whistleblowers respond to financial incentives by filing additional lawsuits, which the DOJ investigates for a longer period and that are more likely to result in a settlement' (Dey et al., 2021, p. 26). The extended length of regulatory investigations, combined with the high percentage of settlements,

[40] Research interviews: Representative of government agency 7 (13 February 2024); Representative of government agency 8 (14 February 2024); Representative of government agency 9 (8 March 2024); Former representative of government agency 1 (7 December 2023); Former representative of government agency 2 (15 February 2024); Former representative of government agency 3 (20 February 2024).

[41] SEC Securities Whistleblower Incentives and Protections § 240.21F-8(e) (2020).

[42] Research interviews: Representative of government agency 7 (13 February 2024); Representative of government agency 8 (14 February 2024); Representative of government agency 9 (8 March 2024); Former representative of government agency 1 (7 December 2023); Former representative of government agency 2 (15 February 2024); Former representative of government agency 3 (20 February 2024).

[43] Research interview: Representative of government agency 7 (13 February 2024).

[44] Research interview: Representative of government agency 9 (8 March 2024).

indicates that information submitted by whistleblowers tended to be of serious and credible violations. The study concluded: 'these findings are inconsistent with the critics' view that greater financial incentives for whistleblowers primarily trigger meritless lawsuits' (Dey et al., 2021, p. 4).

The most recent data from North American reward programmes reflect the results of this research. From whistleblower-related enforcement actions, the IRS has collected a total of US$6.9 billion (IRS Whistleblower Office, 2023); the SEC has ordered more than US$6.3 billion in sanctions (SEC, 2022); the total amount of sanctions ordered by the CFTC has surpassed US$3 billion (CFTC, 2023); and the OSC has ordered sanctions of approximately CA$48 million (OSC, 2023). It can be inferred from these numbers that reward programmes are effective at increasing not only the quantity, but also the quality of information provided to regulators.

### *5.1.2. Deterrent effect*

According to the theory of deterrence, increased reporting of economic crimes should result in fewer individuals deciding to commit illicit activities, due to the greater likelihood of detection and higher probability of penalty enforcement (Becker, 1968). Deterrence is always a desirable policy objective, as preventing crime is far cheaper than dealing with its consequences, and this is particularly true of large-scale economic crime. Researchers have attributed the prevalence of corporate crime to the fact that it constitutes 'a rational economic activity' because the risk of detection is generally low and the benefits high, with the potential for significant business profits and the accumulation of substantial private wealth (Kohn, 2023, p. 278). Thus, if reward programmes enhanced deterrence, they would be a valuable tool for combatting economic crime.

Due to the relatively recent implementation of cash-for-information schemes in North America, research on their deterrent effect remains limited. Moreover, deterrence is inherently challenging to measure, as it is difficult to isolate the numerous factors that influence an individual's decision-making process. Nevertheless, more than half of North American interviewees expressed the opinion that rewards were acting as a deterrent in practice.[45] According to these interviewees, this deterrent effect influenced corporate insiders in two key ways. First, reducing the incentive to commit economic crimes due to the risk of being reported by a colleague; and second, creating 'a race to report' among those aware of illicit activity to avoid being 'the one left holding the bag'.[46] These observations align with academic literature on the deterrent effect of reward programmes, which has begun to emerge over the past decade.

[45] Research interviews: Representative of government agency 7 (13 February 2024); Representative of government agency 9 (8 March 2024); Former representative of government agency 1 (7 December 2023); Former representative of government agency 2 (15 February 2024); Whistleblower attorney 1 (16 November 2023); Whistleblower attorney 2 (30 November 2023); Whistleblower attorney 3 (11 December 2023); Whistleblower attorney 4 (9 February 2024).

[46] Research interview: Whistleblower attorney 2 (30 November 2023).

Empirical and experimental studies have found evidence that whistleblower rewards reduce incidents of cartel formation (Bigoni et al., 2012), tax evasion and aggressive financial reporting (Breuer, 2013; Amir et al., 2018; Wiedman & Zhu, 2018), insider trading (Raleigh, 2020), and fraud against the government (Dyck et al., 2010). Berger and Lee determined in a 2022 study that since the implementation of the SEC and CFTC whistleblower reward programmes in 2011, the likelihood of accounting fraud at large companies had reduced by 12% to 22%. This finding is supported by a 2023 study, in which Gaydon and Boyle (2023) assessed the decision-making process of 91 experienced financial managers in the US. The research concluded that 'whistleblower rewards drive conservatism in financial managers' decisions; therefore, it could be reasonable to suggest that government programs are helping reduce fraud' (Gaydon & Boyle, 2023, p. 390).

A complementary stream of studies has found a connection between the size of a reward and its potential deterrent effect, with rewards needing to be sufficiently large to effectively incentivise reporting and thus serve as a deterrent (Feldman & Lobel, 2010; Givati, 2018; Nyreröd & Spagnolo, 2021a; Vandekerckhove et al., 2018). The need for large rewards is particularly relevant to cash-for-information schemes that aim to incentivise corporate insiders to report incidents of economic crime. The already substantial risks involved in becoming a whistleblower are magnified for financial and professional service providers, whose jobs prioritise confidentiality, privacy and trust. Disclosing sensitive information, even in the public interest, can result in the whistleblower not only sacrificing a highly remunerated position, but also becoming blacklisted from their chosen profession. Research into whistleblowers in the UK financial services sector found that 70% experienced victimisation or dismissal, or felt that resignation was their only option after reporting internally (Protect, 2020). In the US, a Harvard Business School study of over 1,000 whistleblowers who reported incidents of corporate fraud found that 42% changed industries after making a disclosure (Dey et al., 2021).

The need for rewards to match this heightened risk profile has been substantiated by economic modelling, which found that 'as the personal cost of whistleblowing increases, a higher reward is required to induce reports and maintain deterrence' (Givati, 2016, p. 45). Interestingly, it would appear that some regulators who administer capped reward programmes have learned this lesson through trial and error. A reward programme for reporting cartels in the Republic of Korea was initially considered a failure, as fewer than ten reports were generated in its first four years (Transparency International, 2018). To encourage more whistleblowing, the reward level was progressively increased from a starting point of US$19,000 in 2002, to US$2.8 million in 2012 (Stephan, 2014). Scholars attribute the increase in rewards as a key factor for Korea becoming 'one of the most active cartel enforcement regimes in the world' (Stephan, 2014). Similarly, in the UK, the CMA recently increased the rewards available for whistleblowers who report unlawful cartel activity from £100,000 to £250,000 (CMA, 2023). Thus, the evidence and practical experience of international regulators would indicate that cash-for-information schemes can create a deterrent effect, but only if rewards are set at a level sufficient to outweigh the risks of reporting.

### *5.1.3. Cost-benefit analysis*

Once it is established that reward programmes can provide an increase in actionable information and create a deterrent effect, it must be considered whether these benefits are cancelled out by the additional regulatory resources needed to manage the increased volume of disclosures. The cost-effectiveness of paying whistleblowers is a common concern, with the FCA and PRA (2014, p. 2) contending that 'introducing incentives has been accompanied by a complex, and therefore costly, governance structure'. However, few robust cost-benefit analyses of reward programmes have been conducted due to the numerous challenges involved. A preliminary hurdle is that it often takes years for financial recovery to be finalised and a reward paid. For example, the record US$279 million whistleblower payment the SEC made in 2023 was reportedly in relation to a settlement reached in 2019 (Sun, 2023). Thus, any administrative costs expended during a particular financial year will not correlate to the funds recovered or the whistleblowers paid in that period.

Another complication is how to define the benefits gained, and costs incurred, from a reward programme. If the benefits are characterised as purely the financial sanctions ordered, this excludes broader gains, such as a deterrent effect. The definition of financial sanctions can also have significant implications; for instance, it was not until 2020 that the SEC allowed whistleblowers to be rewarded in connection with a range of settlement agreements (Zuckerman, 2022). On the other side of the equation, if the costs are defined simply as the regulator's administrative expenditure, this does not consider what resources would have been expended if the whistleblower's information had to be discovered by traditional investigative methods (Stephan, 2014). Although it is difficult to quantify the investigative costs saved by involving whistleblowers, it has generally been assumed to be cheaper than classic 'command and control enforcement methods' (Nyreröd & Spagnolo, 2021b, p. 89).

A study that considered the cost of employing law enforcement personnel versus paying whistleblowers found that, where the reward programme had sufficient design controls to minimise false reports, 'whistleblowing is the economically efficient way of enforcing the law … and therefore whistleblowing should be the preferred law enforcement strategy' (Givati, 2016, pp. 67-68). This was corroborated by the experiences of all the current and former representatives of North American government agencies interviewed for this project, who emphasised the invaluable ability of insider information to drastically narrow an investigation at an early stage.[47] Two interviewees recounted separate instances where whistleblowers provided a 'live feed' of unfolding illicit activity – an investigative advantage the interviewees noted would be impossible to replicate without a costly and time-consuming covert operation.[48]

[47] Research interviews: Representative of government agency 7 (13 February 2024); Representative of government agency 8 (14 February 2024); Representative of government agency 9 (8 March 2024); Former representative of government agency 1 (7 December 2023); Former representative of government agency 2 (15 February 2024); Former representative of government agency 3 (20 February 2024).

[48] Research interviews: Representative of government agency 8 (14 February 2024); Representative of government agency 9 (8 March 2024).

Putting to one side the broader and less tangible costs and benefits of a reward programme, some academics have attempted to undertake a straightforward cost-benefit analysis by offsetting the regulator's administrative costs against the revenue recovered through whistleblower-related actions. Vandekerckhove et al. (2018, p. 3) examined data from North American and Korean programmes and concluded that 'in financial terms, the benefits of such programmes outweigh the costs by a factor of 6 to 33'. Nyreröd and Spagnolo (2021a, p. 252) conducted a 'back-of-the-envelope' calculation and estimated that: 'the average whistleblower complaint at the IRS generates around $30,664 in tax revenues, and costs $590 to process and that the average claim at the SEC is worth around $60,498 in sanctions and costs around $2,263 to process'.

The CFTC whistleblower reward programme is perhaps the most conducive to a cost-benefit analysis because the regulator publishes a summary of its financial performance in its annual reports. Using data from the first ten years of operation of the CFTC programme, Kohn and Schepis (2022) calculate that the total administration costs for fiscal years 2012 to 2022 equate to almost US$21 million. Deducting those costs and the total rewards paid to whistleblowers over that decade from the total financial recovery obtained from whistleblower-related cases results in a gross operating profit of more than US$2.6 billion. This indicates that whistleblower disclosures are enabling US law enforcement to recover high-value sanctions, and that the quantity of tips received by the regulator is not compromising the financial viability of the reward programme.

## 5.2. A moral hazard?

A prevalent critique in scholarship published in the first few years after the US programmes were implemented was that rewards could create 'negative motivation crowding effects which [lead] – in the worst case – to less instead of more reporting' (Schmolke, 2021, p. 11).[49] The theory was that 'whistleblowers are willing to report misconduct out of a sense of fairness and justice, but reject the idea to do so 'just for the money'' (Schmolke, 2021, p. 11). Thus, it was argued that financial incentives could counterintuitively decrease rates of whistleblowing by crowding out an individual's intrinsic moral motivations for reporting. However, numerous studies have found little evidence of this materialising under the US programmes.[50] Indeed, one study found that while very small payments of US$1,000 for low-level offences can create a crowding-out effect, this 'largely disappears with the introduction of sufficiently high monetary rewards' (Feldman & Lobel, 2010, p. 1202).

The crowding out argument reflects a moral objection to reward programmes that is common in countries, such as Australia and the UK, which have resisted their implementation. In these jurisdictions, rewards have often been seen as having a

[49] Schmolke (2021) provides a summary of the arguments made for and against whistleblower reward programmes in the literature from 2013 to 2015.

[50] For a summary of this scholarship, see Nyreröd & Spagnolo (2021a, p. 254).

polluting influence on an act that should be done out of a sense of civic duty. For instance, the 2017 Australian Parliamentary Joint Committee into whistleblower rewards heard evidence that 'it would be a sad day if all enforcement processes were based on the idea that you got something out of it, rather than do it because it is the right thing to do' (p. 133). Similarly, the FCA and PRA (2014, p. 3) observed that making large payments to whistleblowers 'would be a substantial shift in UK policy norms, which are very different to those in the US'. These views tie into another morally based concern made by the financial service regulators (FCA & PRA, 2014, p. 3) and raised by interviewees from UK government agencies, that if a paid whistleblower gave evidence in legal proceedings, 'the court could call into question the reliability of their evidence because the witness stood to gain financially, thus undermining the prosecution's case'.[51]

Fundamentally, these arguments reveal the difference between the altruistic lens through which whistleblowing is still viewed in Australia and the UK, and the North American perspective that considers whistleblowers primarily as a source of intelligence. The four US whistleblower attorneys interviewed were perplexed by the idea that a reward could undermine a whistleblower's credibility.[52] First, they stressed that whistleblowers rarely testified in US court cases simply because they were not needed. The insider's role was to open the door for law enforcement to conduct a more effective investigation, which typically yielded sufficient evidence to result in a successful settlement or prosecution, without the whistleblower needing to testify. The US attorneys agreed that, if a whistleblower was to give evidence at trial, it was expected that they would have multifaceted reasons for disclosing. Indeed, a former senior member of a US criminal investigation agency argued that the best whistleblowers were those motivated by revenge as they were the most forthcoming.[53] The same interviewee queried why white-collar whistleblowers were expected to be altruistic, when law enforcement routinely pays blue-collar informants for their information.[54] However, if motivation was a concern, one US attorney observed that it was common for multiple whistleblowers to report large-scale financial misconduct, enabling the prosecution to select the most suitable witness for trial.[55]

Moreover, in the context of a reward programme designed to incentivise the reporting of economic crime, research has shown that moral motivations by themselves are generally not sufficient to incentivise corporate insiders to make a disclosure. A US meta-analysis of employees who witnessed corporate wrongdoing found that 'ethical judgment is related to whistleblowing intent, but not actual whistleblowing' (Mesmer-Magnus & Viswesvaran, 2005, p. 294). This suggests that

[51] Research interviews: Representative of government agency 1 (19 December 2023); Representative of government agency 2 (19 December 2023); Representative of government agency 3 (19 December 2023); Representative of government agency 4 (25 January 2024); Representative of government agency 5 (25 January 2024).

[52] Research interviews: Whistleblower attorney 1 (16 November 2023); Whistleblower attorney 2 (30 November 2023); Whistleblower attorney 3 (11 December 2023); Whistleblower attorney 4 (9 February 2024).

[53] Research interview: Former representative of government agency 2 (15 February 2024).

[54] Research interview: Former representative of government agency 2 (15 February 2024).

[55] Research interview: Whistleblower attorney 3 (11 December 2023).

'employees may be aware when an observed practice is questionable and should be reported, however, this knowledge is insufficient to instigate actual reporting' (Mesmer-Magnus & Viswesvaran, 2005, p. 294). The authors propose that considerations such as the 'fear or threat of retaliation' and 'a perception that the costs of whistleblowing outweigh potential benefits' frequently overpower a whistleblower's moral compunctions to report (Mesmer-Magnus & Viswesvaran, 2005, p. 294). Other academics contend that ethical concerns alone rarely compel insiders to report incidents of corporate misdealing because 'the regulatory harm is more diffuse' compared to health and safety violations, 'where victims are identifiable and suffer physical as opposed to financial injury' (Engstrom, 2018, p. 342).

Australia and the UK already acknowledge that whistleblowers may have diverse motivations for coming forward and no longer require them to meet moral standards. Legislative amendments in both jurisdictions removed the requirement for disclosures to be made in good faith, with the UK in 2013 introducing the alternative standard that whistleblowers must reasonably believe their disclosure is in the public interest (Smartt, 2013).[56] These moves towards prioritising the value of the information over the integrity of the whistleblower represent a change in cultural norms that might indicate these countries are becoming more receptive to implementing an economic crime reward programme. However, another moral hazard for a cash-for-information scheme is the eligibility of culpable whistleblowers, with half of UK government interviewees expressing strong opposition to rewarding individuals complicit in illicit activity.[57] One UK law enforcement interviewee acknowledged that these objections could be seen as hypocritical, commenting that their agency regularly provides financial rewards to complicit intelligence sources but, once the label of whistleblower is applied, there is an expectation that the individual will be 'squeaky clean'.[58]

To accommodate these cultural norms, policymakers could make a design choice to exclude culpable whistleblowers from a reward programme. However, all the current and former representatives of North American government agencies interviewed for this project indicated that preventing professional enablers from reporting would frustrate a programme's ability to detect and deter incidents of illicit financial activity.[59] This is because the clandestine nature of corporate crime results in the deliberate quarantining of information among complicit participants. As a consequence, 'the people who know most about the wrongdoing are likely to be wrongdoers themselves' (Baer, 2017, p. 2241). Instead of excluding culpable

[56] Legislative amendments in Australia that commenced in July 2019 require corporate whistleblowers to have 'reasonable grounds' to suspect that the information they are disclosing is improper (Allens Linklaters, 2019).

[57] Research interviews: Representative of government agency 1 (19 December 2023); Representative of government agency 2 (19 December 2023); Representative of government agency 3 (19 December 2023).

[58] Research interview: Representative of government agency 5 (25 January 2024).

[59] Research interviews: Representative of government agency 7 (13 February 2024); Representative of government agency 8 (14 February 2024); Representative of government agency 9 (8 March 2024); Former representative of government agency 1 (7 December 2023); Former representative of government agency 2 (15 February 2024); Former representative of government agency 3 (20 February 2024).

whistleblowers, North American cash-for-information schemes use design dimensions to scale the size of reward against the egregiousness of the whistleblower's behaviour, as well as disqualifying any whistleblower convicted of a criminal offence in connection with their information.

## 5.3. Strengthening private sector compliance?

Perhaps the most contested element of North American reward programmes is the choice to incentivise, but not mandate, internal reporting by whistleblowers. When establishing its reward programme, the SEC (2011, p. 34327) acknowledged that financial incentives 'have the potential to divert away from reporting internally. If this diversion were significant, it might impair the usefulness of internal compliance programs, which can play an important role in achieving compliance with the securities laws'. However, the SEC (2011, p. 3360) concluded that its reward programme design would sufficiently incentivise whistleblowers to report internally first, thus having the effect of strengthening private sector compliance systems. Similarly, the OSC (2023, p. 9) commented that its reward programme 'is designed to complement – not compete with – internal reporting channels'.

Nevertheless, the potential of a cash-for-information scheme to undermine private sector compliance systems has been widely debated, and criticism tends to fall into three categories. First, it is argued that the availability of significant external rewards creates perverse incentives by encouraging whistleblowers to entrap colleagues or delay reporting incidents of illicit behaviour until it becomes financially beneficial. Second, it is claimed reward programmes will decrease the rates of internal reporting, thus weakening compliance mechanisms. Finally, there is an overarching concern that rewarding whistleblowers to do their regulatory duty undermines government policy. Each claim will be considered in turn.

### *5.3.1. Perverse incentives*

Critics have suggested that a cash-for-information scheme could perversely 'produce the behaviour that it seeks to prevent' (Hansberry, 2012, p. 215). The first type of suboptimal behaviour that reward programmes arguably incentivise is internal sabotage. According to the FCA and PRA (2014, p. 3), 'some market participants might seek to "entrap" others into, for example, an insider dealing conspiracy, in order to blow the whistle and benefit financially'. However, academics who have studied the impact of the US cash-for-information schemes over the past decade have commented that this danger 'appears to be merely a theoretical one' (Schmolke, 2021, p. 16) and that, due to design safeguards, 'entrapment has not emerged as a salient issue in the US experience with the various programs' (Nyreröd & Spagnolo, 2021b, p. 91). In support of this statement, Nyreröd and Spagnolo (2018) cite a National Whistleblower Center study that did not find a single case of entrapment in over 10,000 cases where culpable whistleblowers received a reward.

Another type of undesirable behaviour is if whistleblowers delay the reporting of wrongdoing until it reaches the level of severity required for a reward. The Australian

Parliamentary Joint Committee investigation into whistleblower rewards heard evidence from industry bodies that rewards could incentivise individuals to 'sit on information and to wait for wrongdoing to grow' in order to increase any potential reward payment (Australian Parliamentary Joint Committee on Corporations and Financial Services, 2017, p. 133). Critics argue this would 'have the effect of allowing frauds to persist longer than they otherwise would, thus perversely increasing the social costs of fraud' (Rose, 2014, p. 1277). The SEC's annual reports demonstrate that whistleblower delay does occur, with the regulator reducing the percentages of a small number of rewards each year for 'unreasonable reporting delay', ranging from about two years to more than five years (SEC, 2021, p. 20; see also SEC, 2023, p. 4; SEC, 2022, p. 4). However, while whistleblowers can delay making their disclosures for illegitimate reasons, the Government Accountability Project (2016) has outlined diverse, legitimate reasons for whistleblower delay, which include contemplating the decision to report, creating a career plan and securing the evidence necessary to build a case. On balance, evidence of the SEC reducing a few rewards on account of unreasonable delay can be interpreted as the design safeguards working in practice – appropriately balancing the need for timely disclosure with consideration for the complexities of whistleblowing.

Recent research has highlighted concerns about a different type of adverse outcome: rewarding the activities of short sellers. Using FOI requests, Platt (2024, p. 4) found that approximately 40% of all rewards paid by the SEC under its whistleblower programme went to non-employees or 'outsider tipsters'. As discussed in section 4.5, a significant advantage of North American reward programmes is their broad definition of whistleblower to constitute anyone with relevant information. This inclusive approach enables law enforcement to access high-quality intelligence, regardless of its source. However, Platt argues that activist short sellers are receiving millions of dollars in whistleblower rewards for information they already intended to make public as part of their market activities. Consequently, Platt (2024, p. 6) contends that providing financial incentives for short-seller disclosures does not enhance economic crime detection or deterrence by encouraging insiders to come forward, but instead provides a perverse 'windfall' for certain market participants.

Once an incentive programme is introduced into the market, attempts to abuse it are almost inevitable. This is particularly true for strategies targeting economic crime, as illicit finance actors are constantly developing new methods to exploit and create regulatory vulnerabilities. Therefore, it is critical that cash-for-information schemes are continuously monitored to ensure that positive outcomes are sustained, and any emerging negative consequences are addressed through amendments to the programme's design. For instance, the SEC reward programme already requires whistleblowers to disclose any payments they receive from other cash-for-information schemes.[60] To manage the concerns that have emerged around activist short sellers, the SEC could require whistleblowers to declare any private profits they earned from the disclosure.

[60] SEC Securities Whistleblower Incentives and Protections § 240.21F-10(a) (2020).

### *5.3.2. Internal reporting rates*

The second type of critique is the most prevalent. The FCA and PRA (2014, p. 2) articulated this position as follows: 'incentives offered by regulators could undermine the introduction and maintenance by firms of effective internal whistleblower mechanisms'. The argument assumes that external rewards will incentivise whistleblowers to bypass internal systems, which will weaken management's ability to handle issues internally and have a negative effect on organisational culture (Ebersole, 2011). However, these claims are hard to substantiate against the backdrop of numerous financial scandals that have revealed fundamental and entrenched deficiencies in corporate compliance systems. As the UK Parliamentary Commission on Banking Standards (2013, p. 137) noted, 'one of the most striking features of the series of banking conduct failures has been the absence of whistleblowing'. Using the 2012 LIBOR scandal as an example, the commission commented on how the fraudulent behaviour:

> continued for a combined total of nearly 20 years, with the direct involvement of 78 individuals in nearly 1,300 documented internal requests and well over 1,000 external requests for alternations to submissions. Much of this manipulation was 'deliberate, reckless and frequently blatant'. However, no one blew the whistle. (UK Parliamentary Commission on Banking Standards, 2013, p. 137)

Academics contend that a well-designed whistleblower reward programme can strengthen internal compliance systems and improve the quality of self-reporting by creating 'a quasi-competition for information, forcing the corporation's compliance department to compete with its own employees' (Baer, 2017, p. 2240). There is evidence of cash-for-information schemes having this impact in the US. Directly after the implementation of the SEC and CFTC reward programmes, research indicates that 'many firms proactively shored up their anti-retaliation policies and tried to communicate more effectively to employees the organisation's renewed commitment to internal reporting processes' (Rose, 2014, pp. 1278-1279). This has led corporate governance scholars to characterise reward programmes as a form of 'regulatory nudge', which encourages whistleblowers to use internal systems and ensures that corporations have effective, well-publicised reporting processes, without the need for prescriptive regulation (Austin & Lombard, 2019, p. 83).

In a similar vein, Harvard Law School research found that implementing reward programmes in the US increased rates of whistleblowing not only to an external regulator, but also through internal systems (Iwasaki, 2018). This is perhaps explained by studies that have found most whistleblowers prefer to use internal systems and only resort to external reporting mechanisms when internal ones fail (Smaili & Arroyo, 2019; Vandekerckhove & Phillips, 2019). This is supported by data from North American programmes, with the SEC's 2021 Annual Report noting that 75% of whistleblowers raised their concerns internally before disclosing to the regulator (SEC, 2021, p. 24). Similarly, OSC data reveal that 63% of whistleblowers reported their concerns internally first, and 84% of those reported externally because

they did not believe any steps had been taken to address their concerns (OSC, 2023, p. 9). This reflects the experience of the whistleblowers interviewed for this project, all of whom attempted, unsuccessfully, to resolve their concerns through internal processes before making external disclosures.[61]

### *5.3.3. Interaction with government policy*

Finally, there is the overarching concern that cash-for-information schemes undermine government policy because, as the FCA and PRA (2014, p. 3) outlined, 'rewarding whistleblowers for performing what is arguably their regulatory duty would be difficult to reconcile with the requirements that firms and Approved Persons deal with their regulators in an open and cooperative way'. This is particularly significant when reward programmes are intended to incentivise professional enablers who, by definition, are often subject to legal reporting obligations. One such example is the most recent US cash-for-information scheme, FinCEN's anti-money laundering and sanctions whistleblower programme, which seeks to detect money laundering compliance failures and sanctions circumvention. The US Congress passed legislative amendments in 2022 enabling auditors and compliance officers to qualify as whistleblowers under the programme (Bell et al., 2024). This arguably creates a conflict of interest with reporting requirements, as well as potentially violating professional and ethical standards.

The SEC, CFTC and OSC programmes attempt to circumvent this problem by excluding those people within an organisation that would fall within the FCA's definition of 'approved persons' (FCA, 2023), such as directors or compliance reporting officers.[62] Similarly, the ineligibility of information subject to legal professional privilege, or made in connection with legal representation, makes it difficult for lawyers to qualify for whistleblower awards.[63] These design choices are intended to mitigate the possibility that rewards will fundamentally destabilise legal duties. However, the programmes also include exceptions to recognise that insiders are frequently the first to report misconduct internally and can face fierce retaliation (Kelly, 2021). For instance, a director, auditor or compliance officer will be eligible for a whistleblower reward if they believe that disclosure is necessary to avert substantial financial injury, prevent interference with a law enforcement investigation, or if 120 days have elapsed since the individual reported internally.[64]

[61] Research interviews: Whistleblower 1 (9 January 2024); Whistleblower 2 (16 January 2024); Whistleblower 3 (22 February 2024).

[62] CFTC Whistleblower Rules § 165.2(g) (2011); OSC Policy 15-601 Whistleblower Program § 1 and 15 (2022); SEC Securities Whistleblower Incentives and Protections § 240.21F-4(b)(4) (2020).

[63] For an explanation of the limited circumstances where a lawyer might seek an award under the SEC programme, see West (2013). For academic debate on the complexities involved when lawyers become whistleblowers, see Banick (2011); Bildfell (2017); and Chatman (2019).

[64] CFTC Whistleblower Rules § 165.2(g)(7) (2011); OSC Policy 15-601 Whistleblower Program § 2 (2020); SEC Securities Whistleblower Incentives and Protections § 240.21F-4(b)(4)(v) (2020).

The interaction between an economic crime reward programme and existing reporting requirements will vary by country, depending on the scope of the regulated sector. For example in the UK, where lawyers and accountants are regulated, a greater number of professionals are subject to reporting obligations, such as anti-money laundering requirements, compared to the US. A broader regulated sector that encompasses more transactions will inherently increase the likelihood of potential breaches of these requirements, underscoring the need for robust detection and deterrence mechanisms. However, a larger pool of regulated insiders also heightens the risk of legal conflicts between a reward programme and existing civil or criminal law reporting duties. Thus, policymakers considering the introduction of an economic crime cash-for-information scheme should carefully evaluate what design choices maximise the benefits of incentivising professional enablers to report misconduct, while also minimising potential conflicts with existing legal obligations.

## 5.4. Levelling the playing field?

The stories of personal, professional, medical and financial devastation told by the whistleblowers interviewed for this project are testament to the fact that deciding to make a disclosure can have wide-ranging and life-altering consequences.[65] However, a professional enabler who decides to become a whistleblower faces an additional legal risk. Economic crimes are crimes of deception, involving fraudulent acts that are designed to look legitimate. This obfuscation creates an additional challenge for the prosecution to prove that those involved possessed the necessary intent, as opposed to unknowingly facilitating illicit activity. However, if a culpable whistleblower wishes to be eligible under a reward programme, their disclosure must be true and complete. As cash-for-information schemes do not provide immunity, this means that 'whistleblowing morphs into self-incrimination' (Baer, 2017, p. 2215). This can prove particularly dangerous for professional enablers, who are usually reporting against powerful institutions with unlimited financial resources to pursue legal action. Therefore, whistleblowers often benefit from the advice of specialised legal counsel, who can navigate the implications of making a disclosure.

### *5.4.1. The whistleblowing legal industry*

A legal services market has developed in the US to meet the specific needs of whistleblowers. Indeed, many of the lawyers offering such services were involved in drafting the Dodd-Frank legislation that implemented the SEC and CFTC whistleblower reward programmes. The growth and influence of the US whistleblower attorney industry has been the target of criticism, with one US academic arguing that 'the trial lawyer lobby is certainly a likely promoter of whistleblower [rewards] because attorneys stand to gain considerably from whistleblower litigation' (Ebersole, 2011, p. 146). The concern that whistleblower rewards inevitably produce a whistleblower legal industry has been raised in other countries. The 2017 Australian Parliamentary Joint Committee

[65] Research interviews: Whistleblower 1 (9 January 2024); Whistleblower 2 (16 January 2024); Whistleblower 3 (22 February 2024).

into whistleblower rewards heard evidence that 'all that it [implementing US reward programmes] has done is create a market for increased litigation and litigation funders' (Australian Parliamentary Joint Committee on Corporations and Financial Services, 2017, p. 135). Similarly, the FCA and PRA (2014, p. 2) commented that 'the incentive system has generated significant legal fees for both whistleblowers and firms'. It has been estimated that US whistleblower attorneys have been paid between US$145 and US$290 million in fees related to rewards paid by the SEC and CFTC (Platt, 2022). This is a result of contingency fee agreements, under which a lawyer agrees to be paid for their services by taking a percentage of any money recovered in a successful legal action. A standard US whistleblower attorney contingency fee is between 33% and 40% of the reward payment (Kohn, 2023).

This funding arrangement is beneficial in that it creates a symbiotic relationship between the whistleblower, their lawyer and the regulator. The lack of up-front legal fees enables whistleblowers to immediately access specialised legal advice, which can help redress the power imbalance between individuals and well-resourced organisations. Moreover, the contingency fee financially incentivises the lawyer to verify the whistleblower's information and prepare a comprehensive case, thus reducing the administrative burden on regulators. The six current and former representatives of North American government agencies interviewed for this project all mentioned their reliance on lawyers to screen whistleblower tips, with the three current representatives commenting that they prioritise claims submitted by trusted attorneys.[66] This is supported by the OSC review of its reward programme in 2023, which noted 'we see key benefits deriving from lawyers' (OSC, 2023, p. 11) such as 'the assistance of counsel who helped whistleblowers analyse their information and clarify their allegations' (p. 4). Indeed, the OSC identified a future priority as 'supporting the development of an Ontario whistleblower bar' (p. 11). However, it is important to consider the less beneficial consequences of predominately outsourcing a regulator's initial screening of whistleblower claims to private legal professionals.

### *5.4.2. Consequences of outsourcing*

Recent empirical research has examined the implications of the SEC and CFTC reward programmes design choice to 'effectively outsource much of the tip-sifting function to private lawyers' (Platt, 2022, p. 758). Through a series of FOI requests, Platt obtained a list of legal counsel who represented successful whistleblowers under the two US programmes from their inception until the end of 2020. Platt found 'significant efficiency and accountability deficits' including 'that tipsters represented by lawyers appear to significantly outperform unrepresented ones, repeat-player lawyers appear to outperform first-timers, and lawyers who used to work at the SEC appear to outperform just about everybody'. Platt also found that the legal counsel representing whistleblowers under the SEC and CFTC programmes were dominated

[66] Research interviews: Representative of government agency 7 (13 February 2024); Representative of government agency 8 (14 February 2024); Representative of government agency 9 (8 March 2024); Former representative of government agency 1 (7 December 2023); Former representative of government agency 2 (15 February 2024); Former representative of government agency 3 (20 February 2024).

by ‘a small set of well-connected [law] firms’ (2022, p. 693). One firm accounted for two-thirds of rewards paid by the CFTC and another firm accounted for one-fifth of rewards paid by the SEC. Moreover, Platt estimates that one quarter of whistleblowers rewarded by the SEC were represented by former employees of the regulator, meaning that ‘the SEC has effectively paid out between US$35-70 million to its own alumni’ (2022, p. 725).

A “revolving door” between the public and private sectors is not necessarily cause for alarm. It is common for supervisory agencies to hire from within the industry they regulate and for civil servants to transition into regulated professions. As the UK Committee on Standards in Public Life noted, there are benefits to this cross-pollination, such as the exchange of ‘expertise, experience and “good practice” messages’ (Thomas, 2017). Experienced whistleblower attorneys provide a valuable service to both whistleblowers and regulators, particularly given the volume of submissions the US regulators receive. The SEC received 18,354 tips during financial year 2023, which equates to over 70 whistleblower submissions every workday. Platt’s FOI requests reveal that the SEC has between 30 and 50 staff assigned to evaluating tips, which would require each employee to fully resolve at least one submission per day (Platt, 2022, p. 704). It is therefore understandable that, as the popularity of the reward programme has grown, so too has the regulator’s reliance on the capabilities of private attorneys to triage tips.

However, as Platt’s research demonstrates, the privatisation of what is intended to be a publicly resourced, regulatory function can have unintended consequences. If the extent of this outsourcing is not declared, it can distort an assessment of a reward programme’s effectiveness by underrepresenting the level of regulator funding required to deliver the programme. Furthermore, the prioritisation of whistleblowers who are represented by former employees of regulators will confer a competitive advantage, which may not be readily apparent to whistleblowers when choosing their legal representation. This lack of transparency is compounded by the fact that the US regulators only report the total amount awarded to a whistleblower and do not specify how much the whistleblower receives after legal costs. Finally, Platt (2022, p. 749) concludes by criticising the SEC’s decision not to regulate whistleblower attorney fees, which he claims stands in stark comparison with the extensive regulation of contingency fee arrangements in other legal contexts.

The evolution of the US whistleblower attorney industry would appear to exemplify the findings of the UK Committee on Standards in Public Life, which concluded that the risks of a revolving door must be managed with adequate safeguards (Thomas, 2017). Potential mitigating strategies that could be embedded in the design of an economic crime reward programme include: imposing an employment cooling-off period on former employees of regulators; regulating legal fee agreements for whistleblowers by imposing a cap on contingency fees or adopting a fee approval procedure; and specifying what information a reward programme must publicly report to ensure transparency (Spagnolo & Nyreröd, 2021, p. 85; Platt, 2022, p. 757). In this way, policymakers designing a novel cash-for-information scheme have the opportunity to proactively optimise the gains that flow from engaging with a specialised legal sector, while also putting in place measures to safeguard the integrity of the regulator.

# 6. Placing rewards in context

What emerges from the previous section is that cash-for-information schemes can fulfil their purpose of increasing the detection and deterrence of economic crime without undermining private sector compliance, and that many adverse outcomes can be resolved by appropriate design choices. However, crucial to these findings is recognising that a reward programme is a mechanism designed to achieve specific regulatory goals. This section explains the importance of understanding whistleblower rewards within their regulatory context, before considering the wider framework necessary for cash-for-information schemes to operate effectively as a strategy to combat illicit finance.

## 6.1. Rewards are a regulatory tool

A fundamental finding made by the FCA and PRA (2014, pp. 2 and 7) is that 'incentives in the US benefit only the small number whose information leads directly to successful enforcement action … They provide nothing for the vast majority of whistleblowers'. The criticism that cash-for-information schemes do not adequately compensate or protect whistleblowers is often raised and is well founded. The previous sections have articulated how reward programmes are designed to increase the amount of actionable information on high-value economic crime, which is achieved by implementing eligibility requirements that exclude swathes of potential whistleblowers. Moreover, this research has examined how a reward programme targeting professional enablers essentially incentivises culpable individuals to incriminate themselves without the guarantee of immunity. Finally, although the previous section analysed how rewards enable whistleblowers to access specialised legal representation, financial relief under a cash-for-information scheme does not immediately follow. It can take years for a whistleblower's information to be processed, a case to be investigated and prosecuted, and any associated monetary sanctions settled, before the regulator then determines a monetary reward.

The evidence most frequently cited in support of the critique that rewards help regulators more than whistleblowers is the low number of payments made under the programmes. Using the SEC as an example, Table 2 outlines the annual number of: whistleblower submissions received by the regulator; notices of reward-eligible enforcement outcomes or 'Covered Actions'; and individuals who have been financially rewarded.[67]

[67] Note that the SEC in 2022 and 2023 also issued a small number of rewards in connection with "related actions", which are actions brought by another government or regulatory entity based on the same whistleblower information provided to the SEC. Table 2 does not include related actions because it aims to represent SEC submissions, covered actions and rewards.

### Table 2: SEC whistleblower submissions, actions and rewards

| US fiscal year | Submissions received | Notices of Covered Actions | Individuals paid a reward from SEC actions |
|---|---|---|---|
| 2011/12 | 334 | 170 | 0 |
| 2012/13 | 3,001 | 143 | 1 |
| 2013/14 | 3,238 | 118 | 4 |
| 2014/15 | 3,620 | 139 | 9 |
| 2015/16 | 3,923 | 139 | 8 |
| 2016/17 | 4,218 | 178 | 13 |
| 2017/18 | 4,484 | 193 | 12 |
| 2018/19 | 5,282 | 142 | 13 |
| 2019/20 | 5,212 | 151 | 8 |
| 2020/21 | 6,911 | 105 | 39 |
| 2021/22 | 12,210 | 150 | 108 |
| 2022/23 | 12,322 | Not reported | 103 |
| 2023/24 | 18,354 | Not reported | 68 |
| **Total** | **83,109** | **1,628*** | **386** |

**Does not include Notices of Covered Actions for 2022 and 2023 as this information is no longer reported.*

Source: SEC Annual Reports (2011-23).

Since the SEC programme commenced, approximately 0.5% of submissions have resulted in a whistleblower being paid a reward. From the perspective of a whistleblower seeking redress, that number provides little comfort. However, from a regulator's perspective, this is a tale of success. An enormous amount of information was triaged and many enforcement actions were finalised each year, which resulted in the imposition of significant monetary sanctions. Thus, for regulators, financial rewards represent an efficient and cost-effective means of detecting and deterring economic crime. This illustrates an important yet often overlooked point when the viability of a cash-for-information scheme is analysed – the provision of financial rewards is a regulator's tool, and its regulatory objectives dictate the scope of its outcomes. To a great extent, the goals of a cash-for-information scheme will align with the aims of adequately protecting and compensating whistleblowers, but there will be points where these policy purposes diverge. For this reason, rewards cannot be implemented in isolation or as a substitute for whistleblower remedies and protective measures. If a cash-for-information scheme is to be integrated into an effective government strategy to fight economic crime, it must form part of a comprehensive whistleblower framework.

## 6.2. The rest of the toolbox

What constitutes an effective whistleblowing system is a complex question that is the subject of considerable debate among academics, policymakers, practitioners and whistleblowers. This section provides a brief overview of the key mechanisms that were identified by interviewees and in the literature as being fundamental to the effective operation of cash-for-information schemes.

### *6.2.1. Anti-retaliation provisions, confidentiality and equitable remedies*

Fear of reprisal is perhaps the most significant influence on a whistleblower's decision not to report wrongdoing, with numerous studies finding that strong anti-retaliation protections are fundamental to increasing rates of whistleblowing.[68] This is particularly relevant to corporate insiders, who face heightened financial, professional and personal risks when making a report. North American reward programmes address these concerns with wide-ranging anti-retaliation provisions, which make it unlawful to directly or indirectly intimidate, discriminate or retaliate against whistleblowers.[69] Notably, these protections apply regardless of whether the person making the disclosure qualifies as a whistleblower under the programme or receives a reward.[70]

Alongside these reactive powers, a key preventative strategy is the protection of whistleblowers' identities, which has been described as the 'cornerstone' of cash-for-information schemes (OSC, 2023, p. 2). North American reward programmes place strict limits on when regulators may disclose identifying information. While confidentiality is prioritised over anonymity for regulatory efficiency, whistleblowers may submit tips anonymously if they are represented by legal counsel, who must certify that the whistleblower meets the eligibility requirements.[71] However, whistleblowers will need to identify themselves to the regulator during the reward determination process.[72]

To complement these safeguards, countries must have an adequate financial compensation scheme available to whistleblowers, which is distinct from a reward programme. Traditional employment law remedies for reprisal typically cover the financial loss a whistleblower has suffered, such as lost earnings and employment benefits, legal costs and expenses incurred while seeking a new position. Compensation schemes may also include future losses caused by the retaliation, but this is notoriously difficult to prove because it is inherently speculative (Protect, 2021). These existing legal remedies often fail to account for 'the range and type of detriment that whistleblowers unjustly suffer, leading to damage, beyond traditional concepts of reprisal' (Brown et al., 2019, p. 44). This shortfall has led to reward programmes often being presented as a compensatory solution. However, this is a mischaracterisation, as the two mechanisms have vastly different objectives.

[68] For a summary of this field of research, see Lee et al. (2020, p. 557).

[69] CFTC Whistleblower Rules § 165.20 (2011); OSC Policy 15-601 Whistleblower Program § 13 (2022); SEC Securities Whistleblower Incentives and Protections § 240.21F-2(d) (2020).

[70] CFTC Whistleblower Rules § 165.20(c) (2011); OSC (2023, p. 10); SEC Securities Whistleblower Incentives and Protections § 240.21F-2(d)(2) and (3) (2020).

[71] CFTC Whistleblower Rules § 165.4 (2011); OSC Policy 15-601 Whistleblower Program § 11 (2022); SEC Securities Whistleblower Incentives and Protections § 240.21F-7 (2020).

[72] CFTC Whistleblower Rules § 165.4(b) (2011); OSC Policy 15-601 Whistleblower Program § 3 and 4 (2022); SEC Securities Whistleblower Incentives and Protections § 240.21F-7(3)(b) (2020).

Whereas reward programmes aim to incentivise a select group of whistleblowers to come forward, compensation schemes are designed to restore all individuals who suffer detriment to their original circumstances. Conflating the two creates unrealistic expectations for whistleblowers. Furthermore, introducing rewards in isolation can expose whistleblowers to an increased risk of retaliation without the prospect of restitution. Therefore, before a cash-for-information scheme is implemented, it is critical that policymakers evaluate the adequacy of existing anti-retaliation measures, confidentiality protections and remedies for whistleblowers to understand what gaps may need to be addressed.

### *6.2.2. An empowered and proactive regulator*

Given the low probability that a whistleblower will be financially rewarded under cash-for-information schemes, it is it is reasonable to argue that the prospect of payment is not solely responsible for the significant levels of reporting. This view was shared by all current and former representatives of North American government agencies interviewed for this project, as well as the four US whistleblower attorneys.[73] In their experience, while financial rewards are essential, many whistleblowers use reward programmes because of the robust anti-retaliation protections, assurance of confidentiality, and confidence that their disclosure will lead to meaningful action. Consequently, it is imperative that a reward programme is run by an empowered and well-resourced regulator. This is equally critical if a reward programme is to achieve a deterrent effect, as deterrence requires active enforcement. The effectiveness of the US reward programmes largely stems from the US regulators' ability to act on reports, preserve whistleblower confidentiality, and impose significant penalties for retaliatory behaviour.

One notable example is the case of Barclays Bank CEO Jes Staley. After receiving two anonymous complaint letters in 2016, Staley ordered the bank's internal security unit to identify the authors and even requested video footage from the US Postal Service. This occurred despite warnings from Barclays' in-house counsel, compliance officers and human resources that the letter writers could be considered whistleblowers (Binham & Arnold, 2018). For these actions, the FCA and PRA fined Staley £642,430, a mere 14% of his salary. Barclays itself was not fined by the UK regulators but was required to file annual reports on its whistleblowing systems. By contrast, the New York State Department of Financial Services (2019) fined Barclays US$15 million, citing endemic shortcomings in the bank's whistleblower governance, controls and corporate culture.

The US regulators are not only willing to pursue those who have retaliated against whistleblowers, but also take proactive legal action against corporate behaviour that

[73] Research interviews: Representative of government agency 7 (13 February 2024); Representative of government agency 8 (14 February 2024); Representative of government agency 9 (8 March 2024); Former representative of government agency 1 (7 December 2023); Former representative of government agency 2 (15 February 2024); Former representative of government agency 3 (20 February 2024); Whistleblower attorney 1 (16 November 2023); Whistleblower attorney 2 (30 November 2023); Whistleblower attorney 3 (11 December 2023); Whistleblower attorney 4 (9 February 2024).

obstructs whistleblowers from reporting. This has become necessary because the introduction of rewards has prompted some employers to use contractual provisions and non-disclosure agreements to prevent employees from reporting under cash-for-information schemes. As whistleblower law practitioner Kohn (2020, p. 18) observes, 'under a cost-benefit analysis, it is to a company's advantage to widely use illegal NDAs [non-disclosure agreements], as they will stop or intimidate a large amount of whistleblowing'. Since the inception of the SEC reward programme, the regulator has brought 21 enforcement actions under the anti-impede rule, with the largest penalty of US$10 million being awarded in 2023 (SEC, 2023, p. 7). These actions demonstrate the need for regulators to proactively monitor, and be empowered to pursue, any adverse outcomes that may develop from implementing a reward programme.

### *6.2.3. An efficient Office of the Whistleblower*

Establishing an efficient OWB within the relevant regulator is imperative for the effective functioning of a reward programme. As section 3.2 of this paper illustrates, an OWB plays a pivotal role in every phase of a cash-for-information scheme. Key tasks an OWB undertakes include processing whistleblower submissions, referring actionable tips to law enforcement, and determining rewards. However, an OWB's impact extends well beyond the administrative. Research has demonstrated that, aside from fear of reprisal, the main reasons whistleblowers fail to speak up are a lack of knowledge about whistleblowing processes and scepticism that reporting will lead to meaningful change (Brown & Latimer, 2011; International Federation of Accountants, 2023). An OWB can address these barriers by providing a clear reporting channel, practical guidance on the reporting process, and timely updates on a claim's progress. Beyond supporting whistleblowers, OWBs provide information and training to regulatory staff, law enforcement and the legal profession, as well as engaging with stakeholders and the public to instil cultural acceptance of rewards. Examples of outreach efforts by international OWBs include webinars and presentations at academic, professional and public events, as well as collaborative efforts with other international OWBs to share learnings and develop best practices (SEC, 2021; OSC, 2023).

The centrality of an OWB within a reward programme also makes it uniquely placed to undertake critical monitoring and policy functions. The various design choices of cash-for-information schemes require regular assessment to determine whether they are achieving their intended outcomes. Additionally, some scholars have cautioned that ongoing monitoring is necessary to prevent rewards inadvertently skewing regulatory focus towards highly reported crimes, at the expense of other enforcement priorities (Austin, 2020). US examples highlight the value of such oversight. For instance, the CFTC OWB analyses whistleblower information to identify emerging illicit finance typologies and methodologies, which then inform intelligence and law

enforcement strategies.[74] The CFTC OWB also issues alerts designed to raise awareness of financial crime trends, thus reducing vulnerabilities and indicating to potential whistleblowers what information is of particular interest to law enforcement.[75] Finally, the monitoring activities conducted by OWBs can perform a valuable policy function by identifying questions requiring research and mapping the impact of rewards against broader economic crime-fighting objectives.

[74] For an example, see CFTC (2023, pp. 7-11) where the CFTC provided details of the types of illicit activities whistleblowers reported during fiscal year 2023, and identified a high volume of fraudulent cryptocurrency and digital asset schemes, romance scams and manipulation in the carbon markets.

[75] The CFTC has used information gathered from whistleblowers to create effective financial literacy programmes designed to educate targeted types of consumers, such as high school and college students, military personnel and senior citizens (CFTC, 2011, p. 4). Another example is when the CFTC in 2023 identified weaknesses in the knowledge of the financial literacy community about the risks associated with digital assets and created educational initiatives to 'help educate the educators' (CFTC, 2023, p. 14).

# 7. Observations

This paper has explored the circumstances in which a whistleblower reward programme can achieve its regulatory objectives of increased detection and deterrence of economic crime. The evidence examined provides a viable basis for the conclusion that a cash-for-information scheme could increase the effectiveness of economic crime investigations and play an impactful role within wider strategies to combat illicit finance. However, as the previous sections have demonstrated, delivering such a scheme requires careful design choices, comprehensive stakeholder consultation and ongoing monitoring. With these factors in mind, this paper concludes with a set of observations intended to offer insights for countries that are considering the introduction of rewards for economic crime whistleblowers.

## Observation 1: Rewards achieve certain goals, but not in isolation

The most evident observation from this paper is that a cash-for-information scheme has the potential to deliver valuable outcomes in the fight against economic crime. Financial rewards can provide regulators with "the inside track" by incentivising whistleblowers to come forward with actionable intelligence about concealed economic crimes, thereby improving the speed, efficiency and cost-effectiveness of law enforcement investigations. This results in an increase in successful prosecutions and the imposition of significant financial sanctions, which can deter illict activity and strengthen internal compliance systems. Providing financial rewards also enables whistleblowers to access specialised legal representation, levelling the playing field for corporate insiders who are reporting against powerful entities.

However, this paper has demonstrated that these achievements are not possible unless a reward programme is integrated into a comprehensive whistleblower framework. As a regulatory mechanism, the impact of a cash-for-information scheme will be limited by its regulatory objectives. While the aims of economic crime detection and deterrence generally align with the broader goals of whistleblower protection and compensation, at certain points they diverge. Therefore, it is essential to the optimal functioning of a cash-for-information scheme that financial rewards are administered and monitored by an efficient and well-resourced OWB; supported by extensive anti-retaliation provisions, confidentiality requirements and equitable remedies; and defended by an empowered and proactive regulator.

## Observation 2: Consult to customise

This paper has explored the tensions and trade-offs inherent in cash-for-information schemes and illustrated that good design is fundamental to their success. Design choices can create a reward programme that accommodates whistleblowers' individual circumstances, mitigates unintended consequences, provides a stable

deterrent and ensures certainty for private sector stakeholders. The previous sections have demonstrated that this delicate balancing act can be achieved when policymakers customise design dimensions to suit the illicit activity and type of whistleblower being targeted, as well as the specific legal and cultural context in which the cash-for-information scheme will operate. However, the general lack of empirical research on economic crime whistleblowing in countries that have historically resisted implementing rewards, such as Australia and the UK, remains a significant barrier to designing an evidence-based reward programme.

Policymakers in these jurisdictions must consult broadly and commission studies to address important questions that cannot be answered solely by extrapolating from North American experiences. One example, foreshadowed in section 4.2, is the question of how a cash-for-information scheme will be funded. A reward programme is dependent on the targeted violation attracting a sufficiently large financial penalty to facilitate reward payments, and the regulator must be adequately resourced to administer the scheme. Advice will be needed on whether an Australian or UK cash-for-information scheme would require increases in economic crime sanctions, as well as additional resources for the relevant regulators. Another area for consultation is how a cash-for-information scheme might affect existing investigative and prosecutorial processes for managing culpable informants, such as covert human intelligence sources and assisting offenders. Some UK law enforcement interviewees expressed concern at potential overlaps between informant and whistleblower programmes.[76] In contrast, US law enforcement interviewees regarded whistleblowers as a distinct category of intelligence that, when carefully managed, complement existing frameworks for public cooperation with law enforcement.[77]

An important avenue for future research is how a reward programme will interact with current whistleblower policies and related legal frameworks. Consultation must be undertaken to ensure that a whistleblower reward programme does not create fragmentation or weaken existing whistleblower protections, whether in substance or appearance. Moreover, although public sector whistleblowing falls outside the scope of this paper, policymakers designing a financial reward scheme for private sector whistleblowers should be cognisant of the optics of not providing commensurate financial rewards to those in the public sector. The inherent opaqueness of economic crime and the specific risks professional enablers face when disclosing insider information, as outlined in section 5.1, can be used to justify a private sector whistleblower reward programme. However, this rationale should be clearly articulated as part of the policy implementation strategy. This is particularly relevant in countries like the UK, where recent scandals, such as the alleged large-scale fraud within government procurement contracts during the Covid-19 pandemic, have highlighted vulnerabilities in public sector integrity (Transparency International, 2021).

[76] Research interviews: Representative of government agency 1 (19 December 2023); Representative of government agency 2 (19 December 2023); Representative of government agency 3 (19 December 2023).

[77] Research interviews: Representative of government agency 7 (13 February 2024); Representative of government agency 8 (14 February 2024); Former representative of government agency 2 (15 February 2024).

In addition to addressing key evidence gaps, a comprehensive and transparent consultation process is crucial for building the regulatory, legal, political, private sector and public support necessary for the successful implementation of a reward programme. This could include publishing a consultation paper for public comment; workshopping design dimensions with a wide range of stakeholders including law enforcement agencies, whistleblower advocacy groups and professional associations; and organising scenario mapping sessions with law professionals to evaluate potential legal implications. An effective consultation process was undertaken in both the US and Canada prior to the establishment of their cash-for-information schemes.[78] One interviewee with experience of the development of the SEC's reward programme commented that, without the opportunity to consult closely with the relevant regulatory and law enforcement professionals, the scheme would have foundered.[79] This is a particularly valuable lesson for countries looking to implement a reward programme for the first time, as interviews with representatives from Australian and UK government agencies, non-governmental organisations and the private sector often revealed a fundamental lack of knowledge, or knowledge based on incorrect assumptions, about the design, operation and impact of cash-for-information schemes.[80]

## Observation 3: Prioritise the message, not the messenger

A reward programme prioritises the significance of a whistleblower's information over their motivations for reporting. This represents a profound shift in the concept of whistleblowing – from the act of a moralistic individual to the provision of an intelligence service. As previous sections have articulated, an intelligence-first mindset is essential for a mechanism designed to incentivise corporate whistleblowers because complicit insiders are often the most valuable sources of information about illicit financial activities. Moreover, evidence demonstrates that it is unrealistic to rely on whistleblowing as a tool to combat economic crime if professional enablers are expected to come forward purely out of the goodness of their hearts. However, it would also be unwise for policymakers to design a cash-for-information scheme without first measuring prevailing attitudes towards financially rewarding culpable whistleblowers within their jurisdiction.

While all UK interviewees provided anecdotal evidence of current attitudes towards whistleblowers, the literature review for this paper could not find recent research that

[78] For information about the SEC and OSC consultation processes, see SEC (2010); and OSC (2015).

[79] Research interview: Former representative of government agency 1 (7 December 2023).

[80] Research interviews: Representative of government agency 1 (19 December 2023); Representative of government agency 2 (19 December 2023); Representative of government agency 3 (19 December 2023); Representative of government agency 4 (25 January 2024); Representative of government agency 5 (25 January 2024); Representative of government agency 6 (9 February 2024); NGO representative 1 (8 November 2023); NGO representative 5 (9 January 2024); NGO representative 8 (5 February 2024); Private sector representative 1 (10 January 2024); Private sector representative 2 (6 February 2024).

quantified how UK policymakers, law enforcement professionals, private sector stakeholders and members of the public would react to a cash-for-information scheme. It is important to address this evidence gap because it may reveal a disconnect between institutional perceptions of public opinion and the reality. For instance, in Australia there have been long-held cultural biases against paying whistleblowers, with rewards often characterised as out of step with community expectations (Lombard, 2020, p. 25). However, a 2023 survey of over 1,000 Australians found that a large majority would support financial rewards for individuals who exposed corporate wrongdoing (The Australia Institute, 2023, p. 10). If an effective cash-for-information scheme is to be designed, customised and implemented, policymakers need current data from within their jurisdictions on the prevalent perceptions of whistleblower rewards.

In addition to tailoring a reward programme to suit the legal and cultural context of a given country, proactive efforts should also be made where possible to shift attitudes and enhance understandings of a cash-for-information scheme prior to its implementation. Research assessing current perceptions of rewards could be undertaken to identify prevalent knowledge gaps and misconceptions about such programmes. These findings would then inform the development of initiatives to drive cultural change around whistleblowing by explaining its critical role in increasing the effectiveness of economic crime investigations and broader benefits to society. Educational efforts could be targeted to address the specific needs of key stakeholders, including the law enforcement and regulatory agencies responsible for managing whistleblower cases, as well as the legal professionals involved in prosecuting and adjudicating cases that rely on whistleblower evidence.

## Observation 4: Ongoing progress, not immediate perfection

Finally, this paper has identified that a reward programme cannot be considered a “set and forget” strategy. Economic crime activities are constantly evolving to exploit and create regulatory vulnerabilities. Once a cash-for-information scheme has been implemented, it must be monitored to ensure that positive outcomes are amplified, and emerging negative consequences mitigated. Previous sections have provided examples of US regulators adapting their remits to counter adverse outcomes that developed after implementing reward programmes. These include the SEC introducing the power to permanently bar individuals from the programme who repeatedly make frivolous claims; and the expanded powers of the SEC and CFTC to impose heavy fines on employers that illegally impede or prevent employees from reporting to an external regulator. This paper has also highlighted unintended consequences of US reward programmes that have emerged recently and could be resolved by design changes. These include concerns about allowing short-seller whistleblowers to receive rewards alongside trading profits derived from the same information, and potential distortions caused by insufficient transparency around regulatory reliance on the private legal sector.

All the current and former representatives of US and Canadian government agencies interviewed for this project described their experiences with reward programmes as a continuous learning process.[81] When the interviewees were asked what advice they would give to policymakers who were considering implementing an economic crime whistleblower reward programme, there was general agreement that an incremental approach is best. This involves starting with a reward programme of limited scope, preferably targeting the most egregious and high-value financial crimes, which could be gradually broadened as data is gathered and the programme's impact assessed. A measured approach is also advisable given the high-stakes context. If a whistleblower reward programme had to be unwound, it would send a dangerous message to white-collar criminals. By contrast, a successful pilot programme could reshape political, institutional and cultural attitudes towards financially rewarding whistleblowers, and play a pivotal role in establishing whistleblowing as an integral component in the fight against economic crime.

[81] Research interviews: Representative of government agency 7 (13 February 2024); Representative of government agency 8 (14 February 2024); Representative of government agency 9 (8 March 2024); Former representative of government agency 1 (7 December 2023); Former representative of government agency 2 (15 February 2024); Former representative of government agency 3 (20 February 2024).

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# 9. Appendix

## Factors used to determine the amount of a whistleblower reward

North American regulators use the following positive factors (Table 3) and negative factors (Table 4) when determining the amount of a whistleblower reward.[82] There are minor differences between the SEC and CFTC factors; they have been amalgamated for the purposes of this general summary. The factors are not listed in order of significance.

It is interesting to note that many of these factors are similar to the ones used by HMRC and the CMA to determine the size of whistleblower rewards under the existing UK cash-for-information programmes. The size of HMRC rewards 'depends on a range of factors, including the amount of tax recovered using the information; the estimated revenue that would otherwise be lost; and the time saved examining cases using other methods' (Smith, 2019). For rewards under the CMA programme, factors include the value of the information and the amount of harm the information has helped stop, as well as the effort and risk borne by the whistleblower (CMA, 2014).

### Table 3: Positive factors that may increase the amount of a whistleblower reward

| Factor | OSC | SEC and CFTC |
|---|---|---|
| Significance of the information | The significance of the information provided by the whistleblower, including:<br>(i) whether the information provided by the whistleblower caused commission staff to open an investigation or broaden the scope of an existing investigation;<br>(ii) the truthfulness, reliability and completeness of the information;<br>(iii) whether the allegations in the proceeding related, in whole or in part, to violations of Ontario securities law identified by the whistleblower; or<br>(iv) the degree to which the information meaningfully contributed to a successful investigation of the violation and obtaining an award-eligible outcome. | The commission will assess the significance of the information provided by a whistleblower to the success of the commission action or related action. In considering this factor, the commission may take into account, among other things:<br>(i) the nature of the information provided by the whistleblower and how it related to the successful enforcement action, including whether the reliability and completeness of the information provided to the commission by the whistleblower resulted in the conservation of commission resources;<br>(ii) the degree to which the information provided by the whistleblower supported one or more successful claims brought in the commission or related action. |

[82] CFTC Whistleblower Rules § 165.9 (2011); OSC Policy 15-601 Whistleblower Program § 25(2)-(3) (2022); SEC Securities Whistleblower Incentives and Protections § 240.21F-6 (2020).

| Factor | OSC | SEC and CFTC |
|---|---|---|
| Degree of assistance, timeliness, resources conserved and hardship suffered | The level of assistance the whistleblower provided to commission staff, including:<br>(i) whether the whistleblower provided ongoing, extensive and timely cooperation and assistance by, for example, helping to explain complex transactions, interpreting key evidence, or identifying new and productive lines of inquiry; or<br>(ii) whether the whistleblower appropriately encouraged or authorised others who might not otherwise have participated in the investigation to assist commission staff.<br><br>The timeliness of the whistleblower's initial report to the commission or to an internal reporting mechanism of the entity involved in committing, or impacted by, the violation of Ontario securities law.<br><br>As a result of the whistleblower's assistance, less time was needed to investigate or bring an enforcement proceeding.<br><br>The whistleblower's efforts to remedy the harm caused by the violations of Ontario securities law that were reported, including assisting the authorities in recovering any amounts obtained as a result of non-compliance with the Ontario Securities Act or the Commodity Futures Act.<br><br>Any unique hardships experienced by the whistleblower resulting from the whistleblower's report to the commission or an internal compliance and reporting mechanism. | The commission will assess the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the commission action or related action. In considering this factor, the commission may take into account, among other things:<br>(i) whether the whistleblower provided ongoing, extensive and timely cooperation and assistance by, for example, helping to explain complex transactions, interpreting key evidence, or identifying new and productive lines of inquiry;<br>(ii) the timeliness of the whistleblower's initial report to the commission or to an internal compliance or reporting system of business organisations committing, or impacted by, the violations, where appropriate;<br>(iii) the resources conserved as a result of the whistleblower's assistance;<br>(iv) whether the whistleblower appropriately encouraged or authorised others to assist the staff of the commission who might otherwise not have participated in the investigation or related action;<br>(v) the efforts undertaken by the whistleblower to remediate the harm caused by the violations, including assisting the authorities in the recovery of the fruits and instrumentalities of the violations; and<br>(vi) any unique hardships experienced by the whistleblower as a result of his or her reporting and assisting in the enforcement action. |
| Participation in internal compliance and reporting systems | Whether and the extent to which, the whistleblower or any legal representative of the whistleblower participated in internal compliance and reporting systems by:<br>(i) reporting the possible violations of Ontario securities law through an internal compliance and reporting mechanism before, or at the same time as, reporting them to the commission; or<br>(ii) assisting in any internal investigation or inquiry concerning the reported violations.<br><br>The impact the whistleblower's report to the commission or an internal compliance and reporting mechanism had on the behaviour of the person or entity that committed the violation, for example by causing the person or entity to promptly correct the violation. | The commission will assess whether, and the extent to which, the whistleblower and any legal representative of the whistleblower participated in internal compliance systems. In considering this factor, the commission may take into account, among other things:<br>(i) whether, and the extent to which, a whistleblower reported the possible violations through internal whistleblower, legal or compliance procedures before, or at the same time as, reporting them to the commission; and<br>(ii) whether, and the extent to which, a whistleblower assisted any internal investigation or inquiry concerning the reported violations. |

| Factor | OSC | SEC and CFTC |
|---|---|---|
| Law enforcement interest and priorities | The degree to which providing an award to the whistleblower would:<br>(i) enhance the commission's ability to pursue the purposes of the Ontario Securities Act or the Commodity Futures Act;<br>(ii) encourage the submission of high quality information from other whistleblowers, having regard to the whistleblower's submission of significant information and meaningful assistance, even when the monetary sanctions available for collection were limited or potential monetary sanctions were reduced or eliminated by the tribunal because, for example, the entity self-reported following the whistleblower's report to an internal reporting mechanism.<br><br>Whether the subject matter of the action is a commission priority because:<br>(i) the reported misconduct involved regulated entities or fiduciaries;<br>(ii) the violations of securities laws were particularly serious given the nature of the violation, the age and duration of the violation, the number of violations and the repetitive or ongoing nature of the violations;<br>(iii) the danger to investors or others presented by the violations involved in the enforcement actions, including the amount of harm or potential harm caused by the underlying violations, the type of harm resulting from or threatened by the underlying violations, and the number of individuals or entities harmed; or<br>(iv) without the information, commission staff would have been unable or unlikely to investigate the matter. | The commission will assess its programmatic interest in deterring violations by making awards to whistleblowers who provide information that leads to the successful enforcement of the law. In considering this factor, the commission may take into account, among other things:<br>(i) the degree to which an award enhances the commission's ability to enforce the law; and;<br>(ii) the degree to which an award encourages the submission of high quality information from whistleblowers by appropriately rewarding whistleblowers' submission of significant information and assistance, even in cases where the monetary sanctions available for collection are limited or potential monetary sanctions were reduced or eliminated by the commission because an entity self-reported a violation following the whistleblower's related internal disclosure, report or submission.<br>(iii) whether the subject matter of the action is a commission priority, whether the reported misconduct involves regulated entities or fiduciaries, whether the whistleblower exposed an industry-wide practice, the type and severity of the violations, the age and duration of misconduct, the number of violations, and the isolated, repetitive or ongoing nature of the violations; and<br>(iv) the dangers to investors, market participants or others presented by the underlying violations involved in the enforcement action, including the amount of harm or potential harm caused by the underlying violations, the type of harm resulting from or threatened by the underlying violations, and the number of individuals or entities harmed.<br>(v) the degree, reliability and effectiveness of the whistleblower's assistance, including the consideration of the whistleblower's complete, timely truthful assistance to the commission and criminal authorities. |

## Table 4: Negative factors that may decrease the amount of a whistleblower reward

| Factor | OSC | SEC and CFTC |
|---|---|---|
| Whistleblower culpability | The degree to which the whistleblower was culpable or involved in the violations reported that became the subject of the commission's enforcement proceeding, including:<br>(i) the whistleblower's role in the reported violations of Ontario securities law;<br>(ii) whether the whistleblower benefitted financially from the violations;<br>(iii) whether the whistleblower has violated Ontario securities law in the past;<br>(iv) the egregiousness of the whistleblower's conduct; and<br>(v) whether the whistleblower knowingly interfered with the Commission's investigation of the violations. | The commission will assess the culpability or involvement of the whistleblower in matters associated with the commission's action or related actions. In considering this factor, the commission may take into account, among other things:<br>(i) the whistleblower's role in the violations;<br>(ii) the whistleblower's education, training, experience and position of responsibility at the time the violations occurred;<br>(iii) whether the whistleblower acted with scienter, both generally and in relation to others who participated in the violations;<br>(iv) whether the whistleblower financially benefitted from the violations;<br>(v) whether the whistleblower is a recidivist;<br>(vi) the egregiousness of the underlying fraud committed by the whistleblower; and<br>(vii) whether the whistleblower knowingly interfered with the commission's investigation of the violations or related enforcement actions. |
| Unreasonable delay in reporting | Whether the whistleblower unreasonably delayed reporting the violation(s) of Ontario securities law, including:<br>(i) whether the whistleblower was aware of relevant facts but failed to take reasonable steps to report the violations or prevent the violations from occurring or continuing;<br>(ii) whether the whistleblower was aware of the relevant facts but only reported them after learning about a related inquiry, investigation or enforcement action; and<br>(iii) whether there was a legitimate reason for the whistleblower to delay reporting the violations. | The commission will assess whether the whistleblower unreasonably delayed reporting the violations. In considering this factor, the commission may take into account, among other things:<br>(i) whether the whistleblower was aware of the relevant facts but failed to take reasonable steps to report or prevent the violations from occurring or continuing;<br>(ii) whether the whistleblower was aware of the relevant facts but only reported them after learning about a related inquiry, investigation or enforcement action; and<br>(iii) whether there was a legitimate reason for the whistleblower to delay reporting the violations. |
| Interference with internal compliance and reporting mechanisms | Whether the whistleblower undermined the integrity of internal compliance and reporting systems by:<br>(i) interfering with an entity's established legal, compliance or audit procedures to prevent or delay detection of the reported violation of Ontario securities law;<br>(ii) making any material false, fictitious or fraudulent statements or representations that hindered an entity's efforts to detect, investigate or remediate the reported violation of Ontario securities law; or | The commission will assess, in cases where the whistleblower interacted with his or her entity's internal compliance or reporting system, whether the whistleblower undermined the integrity of such system. In considering this factor, the commission will take into account whether there is evidence provided to the commission that the whistleblower knowingly:<br>(i) interfered with an entity's established legal, compliance or audit procedures to prevent or delay detection of the reported violations; |

| Factor | OSC | SEC and CFTC |
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| Interference with internal compliance and reporting mechanisms (continued) | (iii) providing any false writing or document knowing the writing or document contained any false, fictitious or fraudulent statements or entries that hindered an entity's efforts to detect, investigate or remediate the reported violation of Ontario securities law. | (ii) made any material false, fictitious or fraudulent statements or representations that hindered an entity's efforts to detect, investigate or remediate the reported violations; and<br>(iii) provided any false writing or document knowing the writing or document contained any false, fictitious or fraudulent statements or entries that hindered an entity's efforts to detect, investigate or remediate the reported violations. |
| Erroneous or incomplete information | The information provided by the whistleblower was difficult for commission staff to use because, for example, the whistleblower had little knowledge of the violation of Ontario securities law, or the information provided by the whistleblower contained errors, was incomplete or lacking in detail, unclear or not organised. | Dealt with under the positive factor 'Significance of the information'. |
| Refusal of assistance | The whistleblower refused to provide additional information or assistance to the commission when requested. | Dealt with under the positive factor 'Degree of assistance, timeliness, resources conserved and hardships suffered'. |
| Interference with regulator's investigation | The whistleblower or the whistleblower's lawyer negatively affected commission staff's ability to pursue the matter.<br>The whistleblower or the whistleblower's lawyer violated instructions provided by commission staff. | No equivalent factor. |