Opinion Markets Insight

Best way to encourage whistleblowers? Reward them

UK is among a handful of big markets not to offer money for raising alarms

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After Ted Siedle was paid tens of millions of dollars by a US regulator, he traded his beachfront property in Ocean Ridge, Florida, for a bigger one inland. The lawyer had provided information that led to about $370m of penalties for JPMorgan Chase, the number-one bank in America, which had failed to disclose that it was steering customers to the bank’s own investment products rather than those offered by rivals.

The Commodity Futures Trading Commission deposited $30m in Mr Siedle’s bank account last July; the Securities and Exchange Commission, which awarded him another $48m over the same case in 2017, is yet to settle up.

Besides the house move, to one better able to withstand the battering of a hurricane, has the money changed him? Not really. “It’s not like I was eating out of garbage cans, and now I’m eating filet mignon,” he said. “What the . . . award means to me and to many others who follow my work, is validation that one can do well by doing good.”

Rewarding whistleblowers was a key part of reforms put in place to clean up Wall Street after the financial crisis that came to a head in October 2008. Under the Dodd-Frank Act, passed about two years later, anyone providing original information that led to a fine became eligible to receive a portion of that fine, down the track. The idea was that people would have an incentive to speak up if they saw things that were obviously wrong.

Such a system is not perfect, of course. Some say bounties encourage spurious, half-baked submissions; staff at the SEC had to sift through almost 5,300 applications last year, up from 4,500 a year earlier. And the whistleblowers’ motives may not always be pure. The prospect of a big pay cheque can provide “a perverse incentive to the disgruntled”, said Antony Townsend, who serves as the Financial Regulators Complaints Commissioner in the UK.

But increasingly, rewards for whistleblowers are being adopted around the world. Three years ago the Ontario Securities Commission, for example, set up an SEC-like Office of the Whistleblower with a maximum C$5m award. Last week it announced it had made its first payouts: a total of C$7.5m in three separate cases. Last month Australia passed federal laws enhancing protections

https://www.ft.com/content/cac4c994-3f24-11e9-9bee-efab61506f44
for whistleblowers, including compensation for those suffering damages. It stopped short of offering bounties for blowing whistles, but the opposition Labor party wants to put that on its election platform.

The UK, in that context, seems a bit of an outlier. The Financial Conduct Authority, the main market regulator, has a programme encouraging whistleblowers to come forward. But it offers no financial inducements for doing so.

Mark Steward, the FCA’s director of enforcement, who made his name going after frauds in Hong Kong, has beefed up the programme since arriving a few years ago. A bigger team of about a dozen people is now handling submissions; the FT reported this week that complaints rose a quarter last year, to 1,755. Recent cases — including that of John Banerjee, a former currency trader sacked after he complained about flaws in compliance — have highlighted the risks of appearing to retaliate against a whistleblower.

But still, there are no monetary incentives for people who know they may be sacrificing an awful lot — promotions, prospects of being hired elsewhere — by speaking out.

That is a problem. Even if people do not appreciate what they are getting into, the consequences for raising an alarm can be severe. Jaber Jabbour, for example, was winning commendations for his work structuring derivatives trades at Goldman Sachs in London before he wrote an email in June 2008 expressing concerns that a client — the Libyan sovereign wealth fund — did not understand the risks it was taking on.

The note, copied to a few senior people, was friendly; he even included a smiley face in it. But the atmosphere around his desk changed instantly, he said. The next working day, he applied for permission to stay in the UK as a highly skilled migrant, anticipating that Goldman — the sponsor of his work permit — would fire him. Within a few months he was indeed gone, part of a wave of redundancies that the bank linked to the financial crisis.

Goldman declined to comment on his case.

“It’s so compelling to me,” said Mary Inman, a whistleblowing specialist at Constantine Cannon, a law firm in London. “To a person, [whistleblowers] are all treated the same. They’re instantly persona non grata, like they’re contagious, like the autoimmune response is to expel them.”

As for Mr Siedle, he was unapologetic about the size of his awards, both the biggest the CFTC or the SEC has ever granted.

“Come up with a number you think is fair for those superheroes who end the abuse,” he said. “I’d argue it should be commensurate with the profiteering.”