

STATUTORY WHISTLEBLOWING PROTECTIONS IN JERSEY

A SHORT BRIEFING NOTE

Introduction

On 18 July 2023, the States Assembly agreed the following Proposition

[p.47-2023 amd.pdf \(gov.je\)](#)

The link to the Hansard of the debate is here: [2023.07.18 States - edited \(KL\).pdf \(gov.je\)](#)

The debate starts at p.77.

This is a short briefing note, which focuses on the types of whistleblowing protections in other jurisdictions (notably the UK) and poses some high-level questions about the possible scope and application of a statutory whistleblowing scheme in Jersey.

If your business or organisation has a whistleblowing policy currently in place, the Forum would be keen to understand how it is promoted and policed. In addition to considering the questions posed in this note, the Forum would be grateful for a brief summary of your policy. Responses will form the basis for face-to-face meetings later in the consultation exercise.

General background to whistleblowing

A generally accepted definition of whistleblowing (or more formally, making a protected disclosure) is a situation in which someone observes something they think is wrong and the public interest is in favour of disclosing what they see or know. The important point in many jurisdictions is that a whistleblower must make a disclosure in “good faith”, rather than for ulterior motives.

Application of whistleblowing laws

1. The types of complaint that are typically covered by whistleblowing legislation include:
 - Criminal activity, such as fraud
 - Breaches of health and safety legislation
 - Environmental damage
 - Miscarriages of justice
 - The company the employee works for is breaking the law as an entity
 - An observer believes someone is covering up wrongdoing, either for personal or organisational reasons
 - Breaches of data protection laws

This is not an exhaustive list.

2. The types of complaint that are not typically covered by whistleblowing legislation include:
 - Personal grievances such as bullying, harassment and discrimination – these would need to be dealt with by internal workplace grievance procedures, unless a link could be demonstrated to any of the activities outlined above
3. As a whistleblower, legislation tends to provide that someone is entitled not to be treated unfairly or suffer any detriment because of their whistleblowing. In the UK cases can be taken to an Employment Tribunal if a person suffers unfair treatment or detriment.
4. In many jurisdictions, particular emphasis is placed on the reporting of economic crime and, given the scale of Jersey's involvement in financial services, this may be a natural starting point for scoping out the range of activities that might be caught by any whistleblowing provisions in Jersey legislation.
5. In whistleblowing legislation, the scope of protection can vary widely. Whistleblowing laws in some countries, such as India, only protect public employees. In other countries, such as Japan and South Korea, both public and private employees are protected.
6. Jurisdictions also differ about who qualifies as a public or private sector whistleblower. In some countries, only government employees may qualify as public sector whistleblowers, while in countries such as Mexico, Portugal and Norway, a wide range of individuals, including former employees, contractors, or suppliers, can qualify as public sector whistleblowers.
7. Having said that, there appears to be a core set of general principles that are accepted internationally.
8. Jurisdictions around the world continue to implement whistleblowing legislation at pace, particularly since the EU introduced a Directive in April 2019. A key feature of the Directive is its protection of whistleblowers from retaliation by employers, such as termination of employment or demotion.

Next steps – questions for consideration by respondents

9. This is a complicated area, but the Forum considers that there appears to be no reason in principle why Jersey should not adopt what, in essence, seems to be a general standard operated in other jurisdictions. Respondents may consider it might ultimately be to Jersey's reputational advantage to have a clear statutory whistleblowing structure in place.
10. The Employment Forum would be grateful if respondents would consider the following questions. Responses will help to form the basis of the next stage of the Forum's work:

- The scope of protected whistleblowing activity - what should/should not count as a protected disclosure?
- How far should that protection be extended (if at all) in Jersey legislation? What are the pros and cons of the “wider scope” approach?
- Who should be covered? Should protection be restricted to employees, or should it cover individuals who provide services to a public and/or private body?
- What procedures should be followed to qualify for protection?
- To whom may a disclosure be made and in what circumstances?
- What sort of arrangements should be in place in terms of access to a Tribunal for complaints of detriment, unfair treatment, unfair dismissal or constructive dismissal?
- What form should remedies and compensation awards take?
- How would/should access to support services for whistleblowers (either internal, external or Government-provided) be provided?
- Should employers be required by law to maintain a whistleblowing policy?
- How should anonymity be preserved in whistleblowing cases?
- How can the best result for Jersey be achieved? Amending the Employment Law or, for example, drafting a standalone Public Interest Disclosure Law?
- To what extent do the current provisions of the Employment and Discrimination Laws in Jersey provide a level of protection for employees who blow the whistle? Are they adequate?

11. In the UK, the Public Interest Disclosure Act 1998 (PIDA) provisions on protected disclosures are inserted into the 1996 Employment Rights Act. PIDA's provisions mirror the protections which exist in UK employment legislation in terms of unfair dismissal, right not to suffer detriment, complaints to an Employment Tribunal and compensation awards, among other issues

12. The provisions in PIDA in terms of protections go wider than in other areas of UK employment law, which means they provide for a wider range of workers. ERA 1996 sets out which other types of workers are protected by the PIDA provisions from victimisation or dismissal when they blow the whistle (Section 43K of ERA 1996).

Examples of the end-to-end process for making a protected disclosure

The Forum offers examples of the protected disclosure regimes in Guernsey:

[CHttpHandler.ashx \(gov.gg\)](#)

and the Isle of Man:

[whistleblowing-policy-v12-final-220623.pdf \(iomfsa.im\)](#)

Conclusion

The Forum welcomes views on the best way to design a system of statutory whistleblowing protections in Jersey. It also welcomes examples of whistleblowing policies being operated already by businesses and organisations in the Island and how they are working in practice.

The Forum would be grateful for comments by 22nd November 2024.