


Whistleblowing protection: Disclosures to external investigators

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Employees or workers raising concerns about wrongdoing are only protected from dismissal or being subjected to detriment if their disclosure is made to the person or persons specified in sections 43C - 43H of the [Employment Rights Act 1996](#).

Disclosures made to the employer, their own legal advisor, or Government ministers will always be protected provided the remainder of the “qualifying disclosure” test is met. Disclosures made to other “prescribed persons” such as HMRC, NHS England and the Health and Safety Executive are also protected if the discloser has a reasonable belief that the failure falls within the remit of the prescribed person and that the information is substantially true.

Chase v Northern Housing Consortium Ltd and another

The Employment Appeal Tribunal in the recent case of [Chase v Northern Housing Consortium Ltd and another \[2025\] EAT 104](#) considered whether a disclosure made to an external investigator appointed by the employer can qualify as a protected whistleblowing disclosure.

Mrs Chase worked for NHCL as its Procurement Director until she resigned in June 2021. She raised a number of concerns about NHCL’s financial practices including that taxpayer’s money was being misused. These concerns were investigated by external auditors commissioned by NHCL who found no wrongdoing, but Mrs Chase remained concerned that information and evidence had been withheld from the auditors during the investigation.

After a long and tumultuous history (including the police being called by the NHCL), Mrs Chase ultimately resigned. Part of her case was that she had been treated with hostility after raising her concerns. She alleged that she had been constructively dismissed on the grounds she had made protected disclosures. One of the disclosures that Mrs Chase relied upon was made to the external auditor rather than directly to her employer.

[Section 43C\(2\) of the Employment Rights Act 1996](#) extends protection to whistleblowers where:

“A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer.”

Employment Appeal Tribunal decision

The Employment Appeal overturned the Employment Tribunal’s judgment and found Mrs Chase’s disclosure to the external auditor did qualify for protection. An “authorised procedure” should be interpreted broadly to ensure that there is adequate protection for whistleblowers making disclosures in the public interest.

It commented that the whistleblowing protection regime would be undermined if employers could simply sidestep it by externalising investigations into wrongdoing.

The relevant question is whether:

“a procedure established by employer was one which either expressly, or impliedly or could be expected to be used by workers to raise protected disclosures”.

This test is likely to be met where an employer commissions an external investigation to investigate wrongdoing.

Conclusion

This case clarifies that a disclosure made to an external investigator can be protected. The judgment also gave other examples where disclosures will be protected such as if made to a confidential whistleblower hotline provided by the employer.

The externalisation of investigations, particularly for high profile or very serious issues, is becoming more common in both the private and public sector. Employers need to be alive to ensuring that those raising concerns or providing evidence (which could amount to a protected disclosure) are protected from detriment or dismissal in the same way that those who raise similar issues internally are.

Likewise, this decision gives important comfort to those raising concerns that they will be afforded protection where those concerns are being raised to external investigations commissioned by their employer. The courts will take account of the important public policy considerations when interpreting the whistleblowing protection regime to ensure that those protections are not unduly limited or undermined.

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