

Whistleblowing Webinars Key Takeaways

November 28, 2024

This autumn, we ran a series of webinars on the topic of whistleblowing, covering everything from the basics of the legal framework, to investigations and whistleblowing from a global perspective. This Q&A insight is designed as a follow-up to the first two webinars, which formed the building blocks of our series, and as a reminder of the key principles.

What is whistleblowing?

Starting with the basics, the legal whistleblowing framework in the UK protects individuals who make certain disclosures of information in the public interest. The legal framework provides that individuals have the right not to be subjected to any detriment or dismissal on the grounds that they have made a protected disclosure.

Who is protected?

Employees and other workers who blow the whistle in line with the requirements outlined in this article are protected.

What is classified as a qualifying disclosure?

Firstly, there must be a disclosure of information, which can be oral or in writing. This can be information of which the person receiving it is already aware. The disclosure must be based on facts and be specific. However, following recent case law, the overlap between disclosures and allegations remains a grey area.

Secondly, the worker must believe that the disclosure is made in the public interest and that belief must be reasonably held. The disclosure cannot therefore just be in the personal interest of the worker and their belief that disclosure is in the public interest must be objectively reasonable. Consider factors such as the size of the group in whose interest the disclosure lies and the nature of the interests affected to help determine if the disclosure is in the public interest or more focused on personal interest.

Finally, the worker must believe that one of the relevant failures has occurred, is occurring or is likely to occur. This belief must also be reasonably held. The relevant failures are as follows:

- that a criminal offence has been committed, is being committed or is likely to be committed;
- that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;
- that a miscarriage of justice has occurred, is occurring or is likely to occur;
- that the health or safety of any individual has been, is being or is likely to be endangered;
- that the environment has been, is being or is likely to be damaged; or
- that information tending to show any matter falling within any one of the preceding points has been, or is likely to be

deliberately concealed.

The worker is only required to provide information which "tends to show" a relevant failure, meaning that it does not matter if it turns out there was no relevant failure provided that the worker's belief was reasonable at the time.

What is a protected disclosure?

A qualifying disclosure can become a protected disclosure depending on the identity of the person to whom it is made, which includes employers and some third parties. The primary method of reporting is an internal qualifying disclosure to the employer and this will be protected. A qualifying disclosure can also be protected if it is made to a relevant "responsible person" or "prescribed persons" such as a regulator or, in limited cases, some other third parties, although there are additional requirements to be met in these circumstances.

Practical tips for dealing with a disclosure

- Provide training on your organisation's policy and process for dealing with whistleblowing.
- During any meeting about a disclosure, allow the worker to be accompanied by a colleague or representative.
- Keep a record of all meetings and provide copies to relevant persons.
- Provide feedback to the worker who raised the disclosure where possible and appropriate.
- Take care not to subject the whistleblower to any detriment (or dismiss them) as a result.

Importance of your whistleblowing policy

The importance of your policy cannot be underestimated. By encouraging a speak up culture, issues raised can be addressed before they escalate. In addition, following robust internal processes will ensure disclosures are investigated and dealt with appropriately and ideally by a dedicated team separate from the usual reporting lines. Policies also minimise the risk of other employees subjecting the whistleblower to a detriment, helping to avoid any reputational damage and minimise legal risk.

Is maintaining confidentiality essential?

Whilst there is no statute in the UK compelling an organisation to protect the confidentiality of a whistleblower, this is best practice. To the extent possible, information barriers should be in place to protect the identity of the whistleblower. It should also be highlighted to workers that, whilst anonymous disclosures can be raised, this may prevent the effective investigation into the complaint raised. Organisations should take care not to overpromise on confidentiality, particularly where the matter raised may ultimately need to be addressed pursuant to a disciplinary policy. In these situations, the accused employee will have an expectation of seeing the evidence against them and this is an area where we often provide strategic advice on the competing risks and requirements.

When do protections not apply?

There is sometimes a misconception that, once a worker has made a protected disclosure, they cannot be subjected to any form of management. This is wrong provided that the protected disclosure is not the reason for the action taken. This can involve a complex legal analysis of the employer's reasons and we suggest legal advice is taken on the circumstances of a particular case.

What is on the horizon for whistleblowing law?

Looking to the future, the government has indicated change in this area is needed and will be focused on improving whistleblower protections. This is especially likely for sectors such as healthcare, finance and government.

Considering cultural shifts, increasingly workplaces are encouraging a speak up culture and the public perception of whistleblowers is more appreciative. This is likely to increase the level of disclosures and require more transparency.

Additionally, the new Employment Rights Bill introduces a reasonable belief "that sexual harassment has occurred, is occurring or is likely to occur" as a qualifying disclosure. We consider that in practice this was likely to be the case in any event. By expressly clarifying that whistleblowing protection covers those reporting that they have witnessed or suspect sexual harassment, workers will be more likely to speak up without fear of repercussions.

Your Key Contacts



Emma Carter

Senior Associate,

Milton Keynes

D +44 20 7320 3923

M +44 7471 953621

emma.carter@dentons.com



Jane Bowen

Senior Associate, London

D +44 20 7320 6249

M +44 77803 91073

jane.bowen@dentons.com



Emily Russell

Senior Associate, London

D +44 20 7246 7257

M +44 74362 56257

emily.russell@dentons.com



Victoria Albon

Senior Associate,

Milton Keynes

D +44 20 7320 3928

victoria.albon@dentons.com



Elouisa Crichton

Partner, Glasgow

D +44 141 271 5338

elouisa.crichton@dentons.com