

Whistleblowers

A quick guide

September 2019

The term 'whistleblower' has in the past (rightly or wrongly) brought to mind negative connotations. A whistleblower might have a personal agenda or an axe to grind. They may be deliberately trying to sabotage a company or individual. Or they may just revel in causing trouble. That was, for many years, the public opinion of a whistleblower, primarily because those who felt compelled to speak out often did so behind a cloak of anonymity. This was because they feared for their future, their job, or even in some extreme cases, their own wellbeing.

Today, we have a much more positive view of whistleblowers. They're seen as people who are brave enough to speak out against corruption, wrong-doing, or unacceptable working conditions and practices. So, if you've reached your limit and need to speak out, who do you talk to?

What is a whistleblower?

This is the term used to describe a worker who passes on information concerning certain types of wrongdoing. Such a report is known as making a 'protected disclosure'. If you see something at work that could be affecting others (including the general public) and decide to speak out, then you could be a whistleblower. It may be signs of malpractice, a risk or actual damage to the environment, a criminal offence or perhaps dangerous working conditions that could potentially put lives at risk.

Is my job at risk?

Whistleblowers are protected by the Public Interest Disclosure Act 1998 ([PIDA](#)), which means it's against the law for anyone to be treated unfairly or dismissed because they have blown the whistle.

The law gives protection to those who expose serious issues within the workplace. So no, you should not be concerned about losing your job because you've chosen to speak out, but it is understandable that you may be. If you're a worker, for example an employee in the NHS, a police officer or office worker, then your job security is protected, even if you decide to go public with your concerns.

Trainees and interns are also protected, as are agency workers.

The law holds that workers are protected against both victimisation and dismissal where a protected disclosure has been made.

What is a 'gagging clause'?

A 'gagging clause' or confidentiality clause as it's more commonly referred to, is an agreement either within a contract of employment or drawn up separately between an employer and an employee. They commonly appear in settlement agreements and other forms of severance agreement. Such clauses prevent the employee from disclosing information about the company or people that they may work with.

The [Employment Rights Act 1996](#) renders gagging clauses unenforceable if they prevent a worker making a protected disclosure, so even if one has been signed, a whistleblower can still go on to expose any wrongdoing as long as it's in the public interest.

Care must be taken not to confuse these with reasonable non-disclosure agreements, which are generally included from the outset within a contract and cover things such as not disclosing to other potential rival companies the details of customers or clients.

Personal grievances

If your issue may be regarded as a personal grievance, rather than something that could affect others, then you may not be covered by any legislation that gives protection to whistleblowers. If you do feel that the issue is more of a personal grievance, you should refer to your employer's grievance policy.

If you are uncertain, you should seek legal advice.

Who do I tell?

You can go directly to your employer either personally or anonymously, but this may not have any real effect. Your employer may well have a whistleblowing policy contained within a staff handbook which you should read before you consider your next steps. Such a policy will explain what you should expect and should also direct you to external bodies if you do not feel able to speak to your employer directly. You can still report your concern to them however, irrespective of whether they have a policy.

Alternatively, you can go to a 'prescribed person'. The prescribed person will depend on what you are blowing the whistle on. Bear in mind that once you pass on the information to your employer or your prescribed person, you won't have any further influence on proceedings. You can find a list of prescribed persons as defined by the Department for Business, Energy, and Industrial Strategy [here](#), but, they include Ofcom, the Accounts Commission for Scotland, The Bank of England, HMRC, The Comptroller and Auditor General, the SFO, the FCA, and other bodies.

If you are not satisfied with how your employer dealt with your concern, you can tell someone else (e.g. a more senior member of staff) or a prescribed person.

Whether you report your concerns to your employer, or to a prescribed person, your employment rights will be protected.

Wider disclosures than that may be permitted but are very fact sensitive. For example, disclosure to the media will only be protected in limited circumstances. Where a disclosure is not permitted, you will not retain the protection given by PIDA.

To bring a successful claim in the Employment Tribunal (ET) if you are dismissed (or suffer a detriment), you will need to show:

1. that you made a disclosure;
2. you followed the correct disclosure procedure; and
3. you were dismissed, or suffered a detriment, as a result of making the disclosure.

It is worthwhile noting that since June 2013, where a case goes to the ET and the ET thinks the disclosure was made in bad faith, it has the power to reduce compensation by up to 25%.

If you don't get the response you think your situation merits, then talk to employment lawyer [Karen Cole](#) today.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

