

Whistleblowing Case Summaries

Notable decisions under the
Public Interest Disclosure Act

The UK's whistleblowing law in practice

Culled from an extensive review of the 1200 claims registered in the first three years of Public Interest Disclosure Act, this Paper reviews how the Act is working and contains summaries of over 60 notable legal decisions.

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"There are obvious tensions, public and private, between the legitimate interest in the confidentiality of the employer's affairs and in the exposure of wrong. The enactment, implementation and application of the "whistleblowing" measures and the need for properly thought out policies in the workplace, have over the last three years, received considerable publicity from various quarters, including the valuable activities of an independent charity, Public Concern at Work, established in 1993 and experienced in providing assistance to both employers and employees."

Lord Justice Mummery - giving the judgement of the Court of Appeal - in its first consideration of the Public Interest Disclosure Act.

ALM Medical Service v Bladon (2002) IRLR 807

Public Concern at Work - the whistleblowing charity - promotes individual responsibility and organisational accountability. We strive to ensure that genuine concerns about wrongdoing in the workplace are raised and dealt with constructively. We offer confidential advice to employees, provide professional services to organisations and promote public interest whistleblowing. Client information is strictly confidential and subject to legal professional privilege. For more information about our work, please visit www.pcaw.co.uk

Introduction

In the first three years of the Public Interest Disclosure Act,

- Employees lodged over 1200 claims alleging victimisation for whistleblowing.
- Two-thirds of these claims were settled or withdrawn without any public hearing.
- At full hearings, 54% of claimants lost, 23% won under other employment or discrimination law and 23% won under PIDA.
- The highest award made by a tribunal under PIDA was £805,000, the lowest £1000 and the average £107,117.

Tribunals reached full decisions in 152 cases. The 63 case summaries in this Report look at all the notable decisions that focused on the Public Interest Disclosure Act. On their facts, these summaries provide a telling insight into the modern workplace, labour relations and employment law. The whistleblowing concerns range from serious crimes and cover-ups to the inconsequential; the victimisation complained of covers both the outrageous and the trivial; and the claimants include both the publicly spirited and time wasters. Above all, the cases show that the Act is helping to tackle serious wrongdoing at work by providing a practical alternative to silence.

The summaries also provide an accurate picture of how the Act's legal principles are applied by tribunals and the higher courts. In this regard, they -

- confirm that whistleblowers do not lose statutory protection simply because they are mistaken;
- show the good faith test being applied in a handful of cases to bar, what on the facts appear, plainly unmeritorious claimants;
- provide examples of disclosures to the media being protected; and
- demonstrate that causation is ultimately a matter of fact, not law.

Extrapolating from the 152 tribunal decisions to the 1200 claims, £30 million¹ was paid out under the Public Interest Disclosure Act in its first three years. By comparison in 2002, Crown Courts dealt with cases involving frauds totalling £717 million, while the public inquiry into child deaths at the Bristol Royal Infirmary cost the taxpayer £14 million.

¹ The actual figure may have been higher, as claims that settle are more likely to be stronger than those that go to tribunal. The strength of the claim may also impact on the size of settlement, a point borne out by reports from lawyers that there have been several seven figure settlements.

Explanatory note

The emboldened titles (e.g. **Aspinall v MSI Mech Forge**) represent decisions of the higher courts. These courts are the Court of Appeal (CA), Scotland's Court of Session (CS) and the Employment Appeal Tribunal (EAT).

Most of the decisions cited below are from Employment Tribunals (ET). Although they are not definitive statements of the law, they do have a persuasive effect. Many of the ET decisions below consider an important or finer point under the Public Interest Disclosure Act. We hope these summaries will be helpful not just to lawyers but to any interested reader who wants to understand how the Act is working in practice. Copies of these

decisions are available for £16.50 (exc. VAT) from Public Concern at Work.

A v B & C (2002) - Detriment: Failure to investigate a complaint of sexual assault was a detriment justifying resignation.

Ms A was the personal assistant to the Managing Director (MD) of B company. The MD took Ms A on a business trip to New York and sexually assaulted her when she was "drunk and insensible". Ms A was too ill to work for 13 months, during which time police in the UK and US investigated the matter. When Ms A was ready to return, she wrote to the Financial Director saying what had occurred and pointed to the ongoing risk to B company's female staff. She said she would not work for the MD, whom she thought should be investigated by the company's Board and sacked. After 3 months there had been no news of any investigation or a considered response so Ms A resigned. ET held that Ms A's letter was a protected disclosure, and that B's failure to investigate was a detriment, so entitling Ms A to resign. Ms A was awarded £79,308.

A v X (2001) - Damages: aggravated damages award where as part of an attempt to keep complaints of indecent assault secret, the manager who had reported the complaints was subjected to a detriment justifying resignation.

Mr A was a branch manager for a major employer (X). Two of his female staff reported to him that a senior manager (SM) had subjected them to indecent assaults and sexual harassment. Mr A passed these concerns to the MD who initiated an inquiry, which led to SM's suspension. ET found that his employers had tried to keep the whole affair secret by threatening Mr A and the two victims with dismissal and slander actions if they mentioned the incidents to anyone. When an employee asked Mr A what was happening to SM, Mr A said he might not be coming back. The employers viewed this as a breach of confidence and disciplined Mr A. SM resigned and after the disciplinary hearing Mr A was given a written warning. He then went off sick with stress and later resigned. ET stated that instead of complimenting Mr A for his proper behaviour, the employer had subjected him to a detriment. Mr A was awarded £140,000, of which £5,000 was aggravated damages because the employer's behaviour was 'totally inappropriate'. [The ET case revived the police enquiry and SM, who had left X to join the police service in a civilian role, was prosecuted for the assaults. He was convicted and jailed for 18 months for what the judge called his 'outrageous sex assaults'].

Allison v Sefton M.B. Council (2001) - Detriment: neither the continuation of bad relations with his manager nor the transfer of the whistleblower to another office was a detriment.

Allison was an environmental health officer. He made a protected disclosure about the conduct of his manager - with whom there had been bad relations for some time - in the issuing of a noise abatement notice. The issue was investigated, though not rapidly. Allison's relations with his manager did not improve and then for operational reasons Sefton Council subsequently moved Allison to another office. ET held that the continuation of Allison's bad relations with his manager was not a detriment and that Allison's transfer to another office was not caused by the disclosure.

ALM v Bladon (2002) IRLR 807 - Procedure: Court of Appeal hold that ET must first decide if a protected disclosure has been made and, secondly, whether it caused the reprisal. To this end should hear the relevant evidence and recommend that directions hearings should identify the issues in dispute and to agree the evidence to be called are. Disclosure: EAT hold that a disclosure to a non-prescribed regulator within 10 days was reasonable. Evidence: EAT take a common-sense approach as to whether the wider disclosure was of substantially the same information.

ALM ran a number of nursing homes. Two months after employing Bladon as a charge nurse in one home, he was asked to act-up as matron. While doing so, he wrote to the Managing Director (MD) with several concerns about care standards and personnel issues. Ten days later and before there had been any formal response from ALM, Bladon disclosed his developing concerns to the Social Services Inspectorate (SSI) as he thought conditions at the home were worsening. [NB The SSI is not a PIDA prescribed regulator]. The SSI's investigation found some substance in 4 of the 6 concerns Bladon had raised. At the same time, the MD disciplined Bladon for his own poor care standards, issued him a written warning and denied him an appeal against it. A week later the MD dismissed Bladon. The ET, having heard evidence from the MD but not from ALM's three other witnesses, held that Bladon's whistleblowing to the SSI was protected as a wider disclosure under PIDA and had caused the reprisals. The ET awarded £23,000 (£10,000 for detriment and £13,000 for unfair dismissal). ALM's appeal to the EAT was dismissed as it held that Bladon's whistleblowing to the SSI had been reasonable and that it had been of substantially the same information as he had raised with ALM. The EAT, however, declined to hear evidence questioning Bladon's good faith and rejected a belated attack on the impartiality of the chairman of the ET. ALM took its case to the Court of Appeal (CA) asserting that its other witnesses' evidence would have questioned whether Bladon had acted in good faith and whether his disclosure to the SSI was in fact reasonable. As an example, ALM referred to evidence that the day before his dismissal Bladon had been seeking evidence from staff in another home to have ALM closed down. The Court of Appeal ordered a rehearing, holding that the ET had erred in refusing to hear evidence from the other ALM witnesses. CA stressed that an ET must first decide whether there had been a protected disclosure and, if so, whether it had been the cause of the reprisal. CA recommended that tribunals hold directions hearings in advance of PIDA cases to identify the issues in dispute and to agree the evidence to be called.

Almond v Alphabet Children's Services (2001) - Detriment: offer of less work to a casual worker was a detriment

Almond was a casual worker at a care home. ET held that after she made a protected disclosure (though to whom or about what is not stated in the summary decision), the care home offered her less work than they had previously. The ET found that this was a detriment and awarded her £1,000.

Aspinall v MSI Mech Forge (2002, EAT/891/01) - Causation: EAT rule that the discrimination law approach to causation should apply under PIDA, so that the disclosure needs to be the core reason for the detriment.

Aspinall, a team leader at a highly specialised manufacturers, was in a dispute with MSI about an injury he sustained at work, for which he was bringing a claim of less than £5000.

Aspinall asked a colleague to video the site of the alleged accident and this was then formally disclosed to MSI's lawyers. MSI was very concerned as the video showed a highly secret piece of equipment and they needed to know who had made it and whether more images had been taken. MSI started disciplinary action against Aspinall, asking him to name the video maker. Aspinall declined, and the next working day he resigned. The following week Aspinall began a job elsewhere which he had recently been offered. Aspinall then claimed under PIDA. Aspinall lost at the ET and at EAT, as both held there had been no dismissal. The EAT also gave guidance on causation and adopting the test from race relations law, held that under PIDA the disclosure has to be "the real reason, the core reason, the causa causans, the motive for the treatment complained of". On the facts of the case, while any protected disclosure had been about health and safety, EAT said the sole reason for MSI's response was the perceived breach of confidentiality of its secret manufacturing process.

Aziz v Muskett & Tottenham Legal Advice Centre (2001) - Good faith: a disclosure made as a means to exert pressure for a pay rise was not made in good faith

Aziz was a receptionist at a law centre. Over two years she took on two additional responsibilities, in respect of which Aziz believed she was entitled to more pay. Aziz also believed her managers had promised more pay but when funding was cut, the only pay rises were given to the advice workers. Aziz then sued the law centre in the county court for not giving her a pay rise. As the costs of defending the action would outweigh the claim, the law centre sought a compromise. Aziz secretly tape recorded a meeting about the compromise and subsequently threatened to release this unless she was given a backdated pay rise. Aziz raised concerns of financial misconduct with local MPs and the Council and also alleged that the tape showed the law centre had said she would be offered another post in breach of its equal opportunity policy. The ET heard the tapes and found no such offer had been made. It also held that the disclosures were not made in good faith as Aziz had made them as "a way of putting pressure on the centre to give her the pay rise she had sought and was not prepared to take no as an answer."

Azmi v Orbis Charitable Trust (2000) - Causation less than 1 year: Tribunal reject explanation that a whistleblower's failure of probation period was for alleged poor performance

Orbis was the UK fundraising part of a US based international charity. Shortly after joining as the resource director, Azmi raised concerns internally about breaches of charity law and circular funding. Azmi also knew that her predecessor had recently sent similar concerns to the Charity Commission. On the day the Charity Commission made a formal request for information, Azmi was told she had failed her probation. Orbis claimed reason was Azmi's poor performance but ET rejected this as Azmi had only just been appointed company secretary and had recently been taken to the US to meet the parent body. Azmi won but award not known.

Azzaoui v Apcoa Parking (2001) - Disclosure from contractor's staff to Council protected under 43C - Obligations on whistleblower to assist with investigation considered

Azzaoui was a parking attendant for Apcoa in Westminster. In late 2000 Azzaoui raised with his managers his concern that pressure to meet targets meant false penalty notices

were issued. In January 2001, when nothing had been done, Azzaoui wrote to Westminster Council setting out 'very serious allegations'. Azzaoui was then suspended and pressed to name those colleagues his concerns implicated. He declined, claiming Apcoa already had enough information to investigate. Apcoa dismissed Azzaoui for gross misconduct. ET held concerns raised in good faith and rightly with Westminster Council as it had a legal responsibility for the issues. Further, that Apcoa had sufficient information to investigate and it was not a breach of trust for Azzaoui not to name names. Award not known.

Bailey v Arrow Consultants (2001) - Disclosure to a prescribed regulator

Bailey, a slaughterhouseman, was summarily dismissed because he had contacted the Inland Revenue about Arrow's affairs. The ET held this was a clear breach of PIDA as the Revenue was a prescribed regulator and so disclosure was protected under section 43F. Bailey, who was in work, was awarded compensation of £11,000.

Bhadresa v SRA (British Transport Police) (2002) - Damages: aggravated damages and injury to feelings - Detriment: unfairly rejected for permanent post after whistleblowing
Bhadresa was a senior barrister. British Transport Police (BTP) wanted her to run its legal department but, due to a recruitment freeze, this had to be done through an agency initially. Bhadresa was assured of a permanent post, her contract was renewed and she was given a 25% pay rise. BTP then advised Bhadresa that it had to advertise the post under its rules but assured Bhadresa the position was hers. Before the interviews, Bhadresa discovered her line manager destroying prosecution files. Bhadresa reported this to the appropriate internal authority and was assured of confidentiality. Bhadresa's manager was suspended as the destroyed files were recovered from the rubbish bins. Bhadresa was cold-shouldered by colleagues and then allies of her manager conducted her interview. BTP appointed a less qualified lawyer and Bhadresa claimed under PIDA. ET, having barred BTP from defending the case, held that Bhadresa was a worker, who had been subjected to a detriment and awarded her £218,000, including £10,000 aggravated damages and £50,000 for injury to feelings.

Bhatia v Sterlite Industries (2001) - PIDA's application overseas; Detriment: threat to destroy the whistleblower was a detriment; £800,000 award

Bhatia, when visiting family in India, saw a job ad for a senior post at Sterlite Industries on mergers and acquisitions, working to its chairman in London and paid in US \$. Bhatia applied and was appointed. ET accepted jurisdiction and found that within 2 months, Bhatia had raised concerns about breaches of US and Australian stock exchange rules. He had raised these concerns internally and to the relevant investment bank that the information Sterlite Industries was supplying about a \$5 million initiative for a proposed listing on NYSE was misleading and would breach its legal rules. This concern was then properly addressed. Bhatia subsequently raised a concern internally that the proposed dilution of equity in an Australian company, contrary to an understanding, would breach Australian legal rules. As a result of these concerns, ET found that the chairman threw his digital diary at Bhatia and threatened to destroy him prompting Bhatia to leave. Award £805,000.

Bill v Morgan (2001) - *Causation less than 1 year: Accountant not protected where disclosures were simply performing his normal duties*

Bill was employed as an accountant and within a couple of months started to raise concerns about an ever-growing range of financial issues. When Bill was dismissed as not suitable, neither party initially mentioned the whistleblowing. ET said even if the concerns were reasonable, Bill was "simply drawing attention to the matters he (as an accountant, in his opinion) considered to be errors / irregularities in accounting, which was pursuant to the specific duties for which he was employed, and was not therefore covered by the Act." Since such disclosures were his very job and since he had been employed less than 1 year, Bill could not show causation.

Borley v Suffolk CC (2002) - *Causation: Transfer of whistleblower not linked consciously or subconsciously with the disclosure*

Borley reported a scuffle between her manager and a youth in care. She was subsequently investigated for interfering with another witness to the incident and the charge was proved. Rather than give Borley a warning, her employing Council decided to transfer her to another unit because of a breakdown in working relationships in the unit. ET held that while Borley made a protected disclosure and her transfer was a detriment, there had been no causal link in fact. ET applied the legal test as to causation that "motive is not factor and intention is not necessary" and on the facts was satisfied that the Council's decision was not linked 'consciously or subconsciously' with Borley's report of the assault.

Boughton v National Tyres (2000) - *Detriment: failure to investigate and cold-shouldering by colleagues was a detriment justifying resignation*

After a break-in at the branch where Boughton worked, he overheard colleagues suggesting that losses at another branch should be written down against the break-in. Boughton taped subsequent conversations to this effect and supplied the tape to his regional manager. Rather than investigate the matter, the regional manager returned the tape to Boughton's manager. Boughton was cold-shouldered at work and then resigned. ET held he had been victimised for making a protected disclosure. Award not known.

Bright v Harrow & Hillingdon NHS Trust (2000) - *Qualifying disclosure: nun wearing a habit not a PIDA concern; Media disclosure unreasonable & no substance to concern*

Bright, a consultant psychiatrist, raised a concern internally about a nun who visited psychiatric patients in the community while wearing her habit. Bright did not think the Trust took the concern seriously and went to the national media, asserting that it was for her, not the Trust, to decide what was in the public interest. Bright's contract was not renewed and she brought a PIDA claim. ET held the concern about a nun wearing a habit was not a qualifying disclosure, and that in any event [a] Bright did not believe the risk to the nun was substantially true or genuine, and [b] her disclosure to the media was not reasonable in the circumstances.

Brothers of Charity Services Merseyside v Eledy-Cole (2002, EAT/0661/00) -

Disclosure: concern raised through Employee Assistance Programme protected as if made to employer. Causation within first year: where the tribunal rejects the employer's explanation, it should clearly set out its reasons and the relevant facts.

Shortly after starting at a charitable hostel as a support worker, Eeady-Cole raised a concern about pornography and illegal drugs. Eeady-Cole raised the matter through a confidential telephone support line operated by an Employee Assistance Programme (EAP) that the charity contracted with. The EAP reported the information to the charity, which carried out an investigation and suspended Eeady-Cole's manager and a colleague (both of whom then left). Within a month - during which the new manager was unhappy with Eeady-Cole's work - Eeady-Cole was informed he had not passed his probation due to concerns about his performance and standards. The Employment Tribunal having heard that in first two months the charity had viewed Eeady-Cole's work very positively, decided that the disclosure was the reason for the changed attitude which led to Eeady-Cole's dismissal. The EAT approved ET's decision that the report via the telephone support service was a protected disclosure to the employer under PIDA 43C(2) as the EAP was contracted to pass on anonymised information about criminality to the charity. However EAT allowed the appeal and ordered a new hearing as it considered that ET had jumped to conclusions about BCSM's change of view about Eeady-Cole's work. EAT observed that the positive reports about Eeady-Cole had been made by the manager who had been implicated in Eeady-Cole's whistleblowing and who then left, while the negative assessment had been made by an experienced manager who had been moved in from another home. EAT said that where a dismissal takes place within the first 12 months and the ET rejects the employer's stated justification for it, the ET should set out clearly its reasoning and the facts it is based on.

Brown v Welsh Refugee Council (2000) - *Qualifying disclosure: fact that concern could be mistaken was no bar to claim. Detriment: re-advertising of whistleblower's job on spurious grounds was a detriment*

Shortly after arriving to run a new project for the Council, Brown became concerned about the validity of expense claims at the Council and she raised matter with the appointing trustee. This led to suspension of director. An internal candidate for Brown's post then made a complaint that the selection panel had lacked an independent observer. When the director was back in post, the Council decided to re-advertise Brown's post and gave her one week's notice. ET found that when taking this action, the Council had ignored the fact that there had been no policy, practice or precedent for such independent observers. ET also held the fact that the Council insisted expenses claims were okay did not in itself stop the application of PIDA. Brown won, award not known.

Butcher v Salvage Association (2001) - *Qualifying disclosure: alleged breach of an accountant's professional code did not of itself come within PIDA*

Butcher, an accountant, was in dispute with the Salvage Association over the content and presentation of internal management accounts. ET said there was no qualifying disclosure as [a] Butcher's legal case was purely that his concern was that he should act professionally at all times and [b] both experts said that no relevant legal obligation arose out of issue.

Carroll v Grt. Manchester County Fire Service (2001). *Detriment: whistleblower victimised by colleagues after his confidentiality breached. Damages: injury to feelings*

Carroll was a retained, on-call firefighter. He reported internally - after an assurance of confidentiality - that his station had put in a false alarm call to generate fee income. Carroll

and colleagues were arrested and then disciplined. Contrary to assurances, the fire service allowed Carroll's identity as the source of the information to be known by his colleagues. Carroll was 'sent to Coventry', had his gear rifled and colleagues were encouraged to complain about him. Carroll resigned stating he now had too much employed work to do. He subsequently brought a PIDA claim. ET held resignation was genuine and so there was no actionable dismissal. As to detriment from colleagues for breach of confidence, Carroll was awarded £1000 for injury to feelings.

Chattenton v Sunderland C Council (2000) - *Detriment: The moving of a whistleblower to an open plan office in line with policy was not a reprisal*

Chattenton, a quality adviser, shared an office with H, for whom he worked most of the time. In the summer Chattenton discovered pornographic images on H's computer and raised the concern internally. H was then suspended. Later Chattenton was told that like all the other staff he would now work in open plan office. Chattenton brought a claim alleging this was a detriment caused by his concern, while the Council said it was policy for all staff to work in open plan offices. ET accepted the Council's case and, applying a discrimination style test, held the move to an open plan office was not a reprisal.

Chubb & others v Care First Partnership (2001) - *Qualifying disclosure: validity of concerns. Disclosure - authorised, to inspectorate. Detriment: compliance with legal obligations, investigation*

The applicants (Apps) worked in a care home for the elderly. They raised over 30 concerns of neglect and ill treatment of residents with the local authority inspectorate, as authorised by the home's policy. When two managers were suspended, Apps were shunned by colleagues. Two months before PIDA came into force, Apps went off sick and thereafter had no direct contact with anyone from the employer. Apps received statutory sick pay, before resigning some six months later. ET held that while some of the complaints were exaggerated or not based on a reasonable belief, Apps had persuaded themselves of the truth of the allegations and were acting in good faith. ET also held that allegations of theft and assault came within 43B(1)(a); of breach of duty of care within 43B(1)(b), of safety risks to residents within 43B(1)(d); and of altering care plans within 43B(1)(f). Apps' disclosure to local authority was protected under 43C(2) as the home's policy authorised this. However Apps' PIDA claim failed as ET found there had been no detriment once they were off sick, rejecting the allegation that the employer's offer of support to Apps was itself 'highly stressful'. The payment of statutory sick pay was not a detriment but only the compliance with the parties' legal obligations. The decision of CFP to demote and transfer one of the managers the Apps had complained about was not in itself a detriment nor was it a justification for their subsequent resignation.

Daniel v Toolmex Polmach (2002) *Causation: restructuring of company and redundancy was not in consequence of the disclosure*

Daniel had for 5 years been a sales director for Toolmex, which manufactured machine tools. In autumn 2000, a new shareholder wanted Toolmex to double turnover without further investment. The following spring, Daniel and 2 colleagues became concerned about four instances of possible false accounting. Daniel raised these with the head office in Poland, which sought to assure Daniel that the issues were in fact in order. In the early

summer, senior personnel were replaced including the person Daniel's concern most related to. Additionally one of Daniel's concerned colleagues was promoted. In July, Daniel was told his post was being made redundant and was offered a lesser post. ET held that the evidence of the restructuring "clearly shows that the process was well in hand before any disclosure and could not have been a consequence of it".

Darnton v University of Surrey (2002, EAT/882/01) *Qualifying disclosure: nature of belief and relevance of whether a concern well founded*

Soon after Darnton had joined the University's European Management School as a senior lecturer, his head of department took Darnton to task over his time keeping. Darnton then complained about the way assessments were marked and the head of department's bullying manner. The relationship deteriorated and the head of department's warned Darnton he was on probation. Darnton took a grievance. Having taken legal advice, Darnton then agreed to leave the University for £19,000 and with an option on future work worth £20,000. When Darnton found another post elsewhere, the University took view that this option lapsed. Darnton disagreed and wrote an intemperate letter to the University complaining about the head of department and seeking money, the HOD's suspension and an independent inquiry. The University replied that Darnton's services were no longer needed. Darnton sued. The ET dismissed the claim as it found that Darnton's allegations were factually incorrect. EAT ruled that this was the wrong test, noting PIDA's construction and that a disclosure could qualify where the worker was wrong, but reasonably mistaken. EAT observed that a qualifying disclosure might include what a worker had seen or heard, or what had been reported to him by others. To varying extents in each of these cases, an assessment of the factual accuracy of the concern would be an important tool in determining whether the belief was reasonable. For this reason, though noting there were ample grounds ET could have found Darnton's disclosures were not in good faith, EAT allowed the appeal.

Donovan v St Johns Ambulance (2001) *Qualifying disclosure: suspicion with no reasonable basis. Detriment: no difference in treatment before and after disclosure*

Donovan was a facilities manager for a charity from 1995. In 1999 Donovan learned that the charity's facilities management work might be outsourced. While Donovan was repeatedly assured that his position would not be adversely affected and he would retain his job title, he remained anxious and went sick. Donovan then discovered that a trustee at the charity had a 3% shareholding in the company that would take over the work and he raised this concern. ET heard that while shareholdings of 5% were required to be disclosed, the relevant trustee did declare his interest shortly before Donovan resigned. ET found that Donovan "had worked himself into such a state as to be highly suspicious of Respondent's managers. This suspicion extended to the conduct of Trustees but had no reasonable or rational basis". They therefore held that Donovan's disclosure was not protected. ET additionally observed that the charity sought to reassure Donovan throughout and that, as Donovan was treated no differently before and after the disclosure, there had been no detriment.

Douglas v Birmingham C Council (2001) - *Qualifying disclosure: lost staff post not a PIDA concern*

Douglas was a teacher in a local community school, and the Council her legal employer.

Douglas was also the staff governor and was unhappy about decision not to replace a departing staff member. Douglas wrote a complaint about the attitude of a Head Teacher and subsequently alleged a detriment. On a preliminary point, ET held that this concern was not a qualifying disclosure as the non-replacement of a staff post was not a type of wrongdoing within PIDA 43B.

Dring v GMB (2002) - *Worker: Union branch secretary a worker, while branch president not.*

Dring, a branch president and branch secretary for GMB, claimed she was victimised for giving evidence in a sex discrimination claim being brought against GMB. On a preliminary point, ET held that Dring was a worker within PIDA in respect of her activities as branch secretary (for which she was paid £3-4,000 a year) but not in her position as branch president (to which she had been elected).

Durrant v Norfolk Sheet Metal (2001) - *Causation: concerns raised on being told of redundancy are not covered*

Durrant had worked for 5 years for Norfolk Sheet Metal as a plumber. When Durrant was told he was summarily dismissed on grounds of redundancy, there was a heated exchange and Durrant countered with allegations about the theft of golf clubs and breach of safety rules by Norfolk Sheet Metal. Durrant won his claim that he had been unfairly selected for redundancy, but the ET dismissed his PIDA claim as the Act had not been intended for use in circumstances where an employee who is being dismissed then "in the heat of the moment accused his employer of some nefarious activity".

Eastelow v Taylor (2001) - *Causation: no inference that employer knew of anonymous disclosures*

Shortly after starting work at a care home, Eastelow made complaints about her pay and conditions. She then began to make anonymous calls to the local social services inspectors about quality of care and fire risks. When a resident died and Eastelow's own conduct came under scrutiny, she was asked to an interview. At the interview E got angry and then took time off sick. Taylor then dismissed Eastelow for unreliability, disruptive conduct, sleeping on duty and taking time off without notice. Eastelow claimed the reason was her disclosure to the social services inspectors. ET found no evidence that Taylor knew Eastelow had made the disclosures and, as they were anonymous, it was unable to infer that Taylor knew. PIDA claim lost.

Everett v Miyano Care Services (2000) - *Public disclosure: failure to raise internally*

Everett was a young care assistant who one morning discovered a resident injured on the floor. She then became very distressed about the incident and went home. From there she rang the social services inspectorate. On an application for interim relief, Everett said she had not made a disclosure to her employer because she had never thought of telling them and, had she thought of it, she would have as her employer had always been approachable. On the evidence, the application for interim relief failed as the 43G(2) preconditions had not been met.

Fernandes v Netcom (2000) - *Causation: complaints about whistleblower were a*

smokescreen

Fernandes was finance officer for a subsidiary of a US telecoms company. In 1997 when Fernandes had told his contact in the US about large and suspect expenses claims made by his CEO, he was told to turn a blind eye. In late 1999 when the CEO's expenses had exceeded £300,000, Fernandes raised his concerns with the US Board. He immediately found himself under pressure to leave and when he refused to resign, he was disciplined and dismissed for authorising the CEO's expenses. Fernandes brought a PIDA claim. The CEO remained in post until Fernandes had won his claim for interim relief. At the full hearing ET decided that the complaints about Fernandes were a smokescreen and that he had been sacked for whistleblowing. As Fernandes was 58 and unable to secure similar work, the award was £293,000.

Fincham v HM Prison Service (2001) - *Qualifying disclosure: complaint about spiteful colleagues not covered*

Fincham complained to his managers about the way he was treated by colleagues and claimed their failure to deal with the situation was a detriment. ET dismissed claim, stating "Almost every day in almost every workplace employees complain to managers of their treatment by other employees, often with good reason. Indeed what has been revealed here appears to have been a hot bed of malice and petty spitefulness...The legal requirement on the part of the employer not to breach trust and confidence between employer and employee is not broken by an employer every time an employee behaves badly to another".

Frost v Boyes & Co (2000) - *Qualifying disclosures: reporting rumours covered*

Frost was a supervisor in Boyes' store, with 10 years' service. Frost reported to a manager that a colleague, T, might be shoplifting. The manager did not reprimand T. Frost subsequently overheard a conversation in the canteen from which she understood the manager was about to commit an insurance fraud. When Frost reported this internally she also cited rumours she had heard that T was having an affair with the manager and had had an abortion. Frost was summarily dismissed for making malicious allegations after the manager and colleagues claimed it was all a joke. ET decided that Frost had raised concerns in good faith, that the additional matters had not been invented but were rumours she had heard. Finding Frost a very serious minded and intense woman, the ET upheld her PIDA claim. Award not known.

Gulwell v Consignia (2002) - *Good faith: where purpose was to secure his own way by bullying tactic, disclosure was not made in good faith*

Gulwell, who was seeking promotion a role as a sales adviser, had a challenging and impertinent approach to both colleagues and managers. He decided to monitor and record the time off, holidays and sick leave of all in his office. He made a series of disclosures and claimed that these caused him to be denied promotion. ET held that Gulwell was making the disclosures "to achieve his own ends to be appointed as sales adviser and as a crude form of bullying tactics" and "to secure his own way in relation to other fellow employees that he believed should have been disciplined". Held the disclosures were not made in good faith and that there had been no detriment.

Hassan v YAFA (2001) - *Good faith: where concern is known to be untrue and disclosure*

is for ulterior motive, it was not made in good faith

Hassan was a development officer at YAFA, a small charity. After three months, Hassan was warned about dissatisfaction with his performance. At this time a dispute arose whether a £47 cheque drawn on the charity had in fact been signed by Hassan's father. Hassan and his father went to the police to no effect. Three months later - when his performance was again under close scrutiny - Hassan alleged in an open meeting that the management committee were a bunch of thieves. As a result, Hassan was dismissed. ET held that the disclosure at the meeting was not in good faith as Hassan [a] had not mentioned his concern internally for 3 months, [b] knew no money was missing, and [c] his motive was to try to divert attention away from his own shortcomings.

Hayes v Reed Social Care & Bradford M D Council (2001) - *Worker: placed by agency has two employers. Causation: detriment due to substantial doubts about professional judgement*

Hayes was employed by Reed and placed at the Council. Both were employers for PIDA, as the Council substantially determined terms of the engagement. Within 2 weeks of starting, Hayes made protected disclosures internally about a vulnerable child for whose care he was responsible, but pursued them in a way which the Council said had proved extremely detrimental for the child. No causation as ET held "there were substantial reasons for calling into question Hayes's judgement as a social worker and his suitability for practising social work". The ET held that these were the substantial grounds for the detrimental action, rather than the protected disclosure.

Hittinger v St Mary's NHS Trust & Imperial College (2001) - *Worker with two employers*
Hittinger was the clinical governance manager for the Trust and had been introduced and supplied to do the work by Imperial College. On a preliminary point, both respondents had said Imperial College had determined her terms of engagement and hence it alone was the employer for PIDA. ET held both respondents were Hittinger's employer within PIDA, as section 43K(2) expressly states employer 'includes' not 'is'.

Holden v Connex SE (2002) - *Disclosure to prescribed regulator. Damages: aggravated and injury to feelings*

Holden, a train driver was made a health & safety representative from 1993. Holden took his duties seriously and raised concerns about public and workplace safety. Denied sight of the risk assessment of a new rota for drivers in 1999, Holden sent two reports to the Health & Safety Executive (HSE) in 1999 believing there was an increased risk that signals would be passed at red. A copy of the reports was made available to colleagues and, following the Ladbrooke Grove crash, someone - but not Holden - told the media about them. Holden was charged with sending an emotive and inaccurate report to the HSE. After he was given a final written warning, Holden resigned. ET held that it was not necessary under PIDA that all the allegations in the report to HSE had to be accurate. It also found that Connex paid lip-service to the safety concerns and had embarked on a campaign against Holden to deter him from speaking out and to force him to resign. Award £55,000, of which £13,000 injury to feelings and £5,000 in aggravated damages.

Hossack v Kettering Borough Council (2002, EAT/1113/01) - *Causation: manner of*

disclosure

In 1999, Hossack a Labour Councillor on Kettering Borough Council (KBC), resigned to join the Conservative Party. She was then appointed as a policy research officer for the Conservative opposition Leader on the Council. Policy research officers are employed by the Council, subject to a Code of Conduct and disallowed from certain public political activity. Within three months, Hossack addressed the Conservative Conference without first clearing it with the opposition Leader, who rebuked her. The Labour Group then brought a complaint against Hossack as her speech was in breach of her contract and the code of conduct. KBC gave Hossack a final written warning. The ET found that thereafter Hossack acted, rather than as a research assistant employed by KBC, as a campaigner seeking to lead the Conservative Group. Due to the disquiet this caused, the opposition Leader told Hossack she should not normally attend the Group's meetings. The opposition Leader also asked Hossack to research for the Group the sale of the Cattle Market with a view to putting the sale to the District Auditor. When Hossack's draft was ready, the opposition Leader asked for certain passages and names to be removed and then he sent the amended report to the District Auditor on behalf of the Group. Hossack then wrote to the District Auditor minimising the role of the opposition Leader and asserting her authorship and unsurpassed knowledge of the issue. Hossack then subverted the opposition Leader's authority by asking his deputy to attend a non-political meeting to discuss the role of policy research officers. These events caused the leader of the Opposition to lose confidence in Hossack and he asked the Council to dismiss her as "I cannot have an assistant who seeks to control and direct the Group". Hossack was dismissed for 3 grounds - lack of judgement, lack of understanding of her role and for ignoring her reporting line to the opposition leader. In her dismissal letter, Hossack's letter to the District Auditor was given as one of several examples. Deciding Hossack's claim under PIDA, the ET held the letter to the District Auditor had been a protected disclosure. However, it held that the real reason for the dismissal was her failure to distinguish her role as a policy research officer from that of an elected Councillor. Hossack appealed to the EAT, submitting that the ET had erred in dismissing her for the manner of her disclosure. Stressing the critical importance of the facts, the EAT dismissed the appeal, stating Hossack's dismissal had been due to the cumulative effect of her conduct, which had led to the Conservative Group to lose faith in her abilities. While the manner of her disclosure had been one manifestation of that, the disclosure itself had not been relevant as was evidenced by the fact that the opposition Leader himself had disclosed the concern to the District Auditor.

Hough v Virtual Presence (2001) - Reason: breach of confidence contrary to PIDA

Hough was the Managing Director of Virtual Presence, which was being merged with another company. ET had no doubt that Hough's dismissal for breach of confidence was because he had raised concerns that false invoices were being used by M to support merger proposal. Award £123,677.

Kay v Northumberland Healthcare NHS Trust (2001) - Public disclosure: reasonable to go to media with NHS concern, role of whistleblowing policy, Human Rights Act

Kay managed a ward for the elderly. Kay internally raised concerns about bed shortage but was told there were no resources. The problem worsened and some elderly patients were to be moved to a gynaecological ward. Kay wrote a satirical open letter to the Prime Minister

for his local paper. With Trust's agreement, Kay was photographed for local press. When letter published, Trust gave final written warning for totally unprofessional and unacceptable conduct. Kay won as the disclosure was protected because [a] 43G, balanced with freedom of expression in the Human Rights Act; [b] Kay did not know of Trust's whistleblowing policy; [c] no reasonable expectation of action following earlier concerns; and [d] it was a serious public concern.

LB Harrow v Knight (2002, EAT/0790/01) - Causation for detriment; Detriment: failure to reply to whistleblower & burden of proof; Damages, injury to health

Knight, who worked in food safety, was concerned that a colleague had prejudiced enforcement action by improperly consenting to an illegal practice. After Knight raised these concerns internally, the Council did not handle the issue well under its whistleblowing policy and failed to answer Knight's letters. Knight then had something of a breakdown for around 9 months. ET held that the illness was a detriment that was related to the protected disclosure and awarded £12,000 (inc. £5,000 for injury to health). EAT allowed an appeal and ordered a rehearing as ET had applied the wrong test as to causation when it found the detriment was 'directly related to' the protected disclosure. Under section 47B PIDA the statutory test that the detriment was 'on the ground that' is clearly different from this 'related to' or 'but for' approach. The EAT (which also considered section 48(2) PIDA on the burden of proof in detriment claims) held that tribunals must establish whether the protected disclosure was the real reason for the detriment.

Leonard v Serviceteam (2002) - Qualifying disclosure: reasonable suspicion is covered. Causation: failure of employer to explain cause of dismissal

Leonard was an experienced plumber employed by Serviceteam to work on Council properties. Leonard reported that due to the aggression of a tenant, he had left a particular job. Leonard's new manager said Leonard was in breach of contract and forbade him from talking to any senior manager. Soon after Leonard wrote to senior managers implicating his manager in corrupt practices and the following day Leonard was dismissed. In evidence, Leonard said he did not know whether the concern of corruption was true or not, but that the information came from others and that he was shown information suggesting the payment of backhanders. ET held that "an employee who holds a reasonable suspicion short of certainty that corrupt practices are being undertaken can be said to hold the reasonable belief as required under the terms of this section. To hold otherwise would seriously undermine the purpose of these statutory provisions." As to causation, ET applied the discrimination law approach and asked the employer to explain its change of heart. As Serviceteam gave no or no adequate reason, ET inferred the dismissal was for whistleblowing. Award not known.

Lewer v Railtrack (2000) - Causation: failure of employer to provide evidence to support alleged cause of dismissal

Lewer was supplied by an agency to Railtrack and had recently been promoted to be a customer services manager at Waterloo. IT stock had been going missing from a restricted storeroom, the most recent item being a laptop. Lewer then found the packaging for a laptop and notified his manager, Q. Lewer checked the records and CCTV and saw that Q had removed a box from the store and had used different swipe cards. Lewer reported this

to Q's manager. Two weeks later, without detailing any allegation and without reference to Lewer's agency, Q dispensed with Lewer's services because of fraudulent use of timesheets. ET held that Lewer had made a protected disclosure and that, having regard to his previous good record and the absence of evidence about fraudulent time sheets, the disclosure was the cause of his dismissal. Claim settled for £25,000.

Llewelyn v Carmarthenshire NHS Trust (2002) - Interim relief: no reasonable prospect
Llewelyn, a consultant at the Trust, became concerned at the increasing use of nurses in his care to deliver expert services to GPs. A panel was set up to review the relevant services. This concluded in May 1999 finding that Llewelyn was primarily responsible for the irretrievable breakdown in his unit and should be replaced. Meanwhile a second panel had been set up under the auspices of the Royal College of Physicians. In November 1999 this concluded that Llewelyn was unsuitable to function as a consultant. After a period off sick, Llewelyn was suspended in June 2000 and dismissed in March 2001. In November 2000 Llewelyn had contacted the Audit Commission about his own position being a waste of public money and about other concerns. Llewelyn brought a claim for interim relief which failed. The ET held that on the level of evidence available to it, Llewelyn had no prospect of being able to dislodge the causal connection that his dismissal was due to the findings of the two reports rather than to his disclosures.

Marchant v The Holiday Place (2000) - Causation: no detriment against more vociferous whistleblowing colleagues

Marchant, a travel consultant, put her name to staff concerns about the effects of telephone headsets in the office. Four months later, when colleagues had neck trouble, Marchant mentioned that she had read an article about the health risks of misusing headsets. Some months later, and within Marchant's first year, Holiday Place decided to make Marchant redundant due to downturn in business. The following day, Marchant's mother complained to the health and safety inspectors who visited the office. Marchant was then dismissed and brought a PIDA claim. Marchant's claim failed as ET held (a) Holiday Place applied 'first in, first out' redundancy selection, (b) the decision to dismiss had preceded the visit of the inspectors and (c) other colleagues had taken a more high profile role on the safety of the headsets and received no detriment.

Miklaszewicz v Stolt Offshore (Court of Session) IRLR 2002 344 - Purpose of legalisation, effective date is the detriment not that of the disclosure

Miklaszewicz had been dismissed in 1993 by Stolt Offshore after he had reported it to the Inland Revenue, as a result of which it had been fined £3 million. Miklaszewicz worked elsewhere in the oil industry and in 1999 his current employers were taken over by Stolt Offshore. In 2000, Stolt Offshore made Miklaszewicz redundant and Miklaszewicz sued, claiming dismissal in breach of PIDA which had come into force in 1999. The ET held on a preliminary point that as the disclosure had predated PIDA, it could not be protected. The EAT overturned this decision because the cause of action under PIDA accrued at the date of detriment and so the fact the disclosure had preceded commencement was not fatal. Stolt Offshore appealed on the ground that as the Inland Revenue had not been prescribed under PIDA at the date of the disclosure there could be no protected disclosure. The Court of Session dismissed the appeal, stating that what the legislation affected was the dismissal,

rather than the disclosure.

Mounsey v Bradford NHS Trust (2002) - *Public disclosure: reasonable to go to media to defend colleague against unfair media coverage.*

Mounsey was medical secretary to a consultant, P, who was concerned about quality of breast cancer services. Mounsey shared and adopted these concerns through and from 1999. In 2001 Mounsey was interviewed on Yorkshire TV and said that in her view P had been made a scapegoat. For giving this interview, the Trust instigated disciplinary proceedings and Mounsey then resigned. At the ET once the Trust learned that Mounsey had agreed to do the interview to counter media coverage about P which she thought had been unfair, the Trust conceded that Mounsey had made a protected disclosure. Award to be decided.

Mustapha v ProTX (2001) - *Causation less than 1 year: Accountant not protected where disclosures were part & parcel of his job*

Mustapha, an accountant, was employed for just over a month. She claimed her dismissal was because she had raised concerns about tax irregularities. On the facts, ET found that (a) Mustapha had been quite content with the draft accounts that went to the external auditors, (b) there was not the slightest trace that she had made any disclosure of concern about tax irregularities, (c) the evidence was totally inconsistent with the view that ProTX was trying to cook the books. ET held Mustapha had made no disclosure other than routine differences of view that were part and parcel of his job. ET said that, as an accountant, if there were genuine concerns, she would and should have raised them quite specifically.

O'Connor v MIND Halton (2001) - *Causation: disclosure follows detriment*

O'Connor was told his post being made redundant due to cuts in funding. On the day this was confirmed in writing, O'Connor wrote to his solicitors raising several concerns about the way affairs were conducted at his office. ET held whether or not this was a protected disclosure, there could be no causation as decision to make him redundant preceded his disclosure.

PC v CCC (2002) - *Good faith: repeating a grossly overstated concern without regard to assurances was not in good faith*

PC, an experienced care worker, joined CCC, a care home for vulnerable children. A colleague told PC that a manager, RL, had asked her to ensure that a boy properly washed his foreskin. PC raised a concern internally that RL had washed the boy's genitals. This was swiftly considered at a meeting where PC was assured he had misunderstood what had happened and what had been said. PC subsequently repeated to a colleague that RL had improperly washed the boy and claimed that the care home could be closed down. For this statement, CCC took action against PC, who then resigned. ET held that PC had made a qualifying disclosure even though his allegation was 'grossly and irresponsibly overstated' as he had had a reasonable belief that the information tended to show the boy was at risk. However PC was not protected as to the disclosure to his colleague because he had graphically alleged the abuse without regard to the assurance that he had misunderstood the facts. As such the disclosure was not made in good faith.

Parkins v Sodexho (2001, EAT/1239/00). *Interim Relief: tribunals should not prejudge issues which are properly for full hearing. Qualifying disclosure: a concern about a breach of one's own employment contract can come within PIDA*

Parkins worked as a cleaner for Sodexho. After 3 months, his managers were unhappy about how Parkins spoke to them and his taking time off in lieu. Parkins was told he had to phone his supervisor (who was off-site) when he was leaving work. Parkins responded that this was a breach of his contract and of health and safety rules in that there was no on-site supervision. Ten days later, Sodexho dismissed Parkins. Parkins brought a claim for interim relief erroneously under separate provisions on health and safety. This claim was dismissed but the ET allowed Parkins to amend and reissue his claim under PIDA. At the second hearing, ET held that even though the manner of Parkins' dismissal was entirely unsatisfactory, it was not able to grant interim relief. It said that (a) it heard no evidence that the health and safety of anyone was endangered, and (b) it did not accept that Parkins' complaint alleging a breach of his own contract could come within PIDA. EAT decided that on a true construction of PIDA, ET had erred in law in saying that a concern about a breach of the employee's own contract could not be a qualifying disclosure under PIDA. EAT held that the ET on the interim relief had erred in prejudging issues about the reasons for the dismissal which were properly for the full hearing, where evidence would be heard from Sodexho. EAT allowed Parkins' appeal and remitted the case for a fresh hearing. EAT also ruled that the ET had been wrong to make a £500 costs order for the first erroneous hearing for interim relief.

Pimlott v Meregrove (2002) - *Causation: where the disclosure is one of several reasons for the dismissal.*

After Pimlott sold his business to Meregrove he was employed as an adviser. At a time when his working relationships had deteriorated into a fight, Pimlott made a protected disclosure about financial issues. ET found there were four genuine and valid reasons for Pimlott's dismissal, one of which was the protected disclosure. Pimlott lost as he was dismissed within one year of employment and he could not show the disclosure was the principal cause.

Pipes v Bridgeford Lodge (2002) - *Causation: burden of proof on employer*

Bridgeford Lodge ran a care home for the elderly and employed Pipes as a care assistant and, after a year, as cook. Pipes reported to her manager a concern about oxygen for a resident, though the concern was not recorded as it should have been. Shortly thereafter Pipes was given a verbal warning for swearing within earshot of residents. Two months later a further incident of Pipes' bad language arose and she was summarily dismissed. Pipes won on PIDA even though she did not attend ET as the evidence of Bridgeford Lodge was 'wholly unreliable' and it had failed to discharge the burden on it under PIDA.

Robinson v Hartland Forest Golf Club (2001) - *Disclosure to prescribed regulator; Detriment, suspension without pay*

8 months after starting, Robinson became concerned that although HFGC was not VAT registered, it charged its customers VAT. Robinson raised this concern with the Finance Director who told him to do as his conscience said. As a result, Robinson notified Customs & Excise. When the MD heard of this, he suspended Robinson without pay. The ET held

that this was a detriment. Robinson, who then resigned, was awarded £2000.

Saunders v Westminster Dredging (2000) - *Causation less than 1 year: employer's failure to follow its redundancy policy*

When Saunders took temporary work on a sea-going barge, he raised concerns about its seaworthiness with the skipper and with the Harbour Pilot. When he was on land, Saunders was told he was no longer needed. Countering Saunders' PIDA claim, Westminster Dredging said there was a redundancy situation and it was convenient to release Saunders. ET held that, as Westminster Dredging had not applied its 'last in, first out' policy on redundancies, it was entitled to conclude Saunders had been selected because he had made a protected disclosure. Award not known.

Scott v Building Management Services (2002) - *Causation less than 1 year: employer's response to the disclosures*

Scott was responsible for certain alarms and electrical work for Building Management Services (BMS), a small firm. After 8 months when Scott attended a site where BMS had just fitted the electricity supply, the Fire Brigade was present and had put out a fire in a cupboard. Scott said the cause of fire was that BMS had bridged a fuse with galvanised wire. He also said that his managers had removed the galvanised fuse and told Scott to say the Fire Brigade had removed it. Scott wrote to BMS about the incident but this received little or no attention. Two months later Scott was working at a primary school and saw dangerous live wires. When he reported this, BMS became angry. Scott wrote again and was then told there was no work for him. Two weeks later he was dismissed. The ET held that this was in breach of PIDA. Award not known.

Sims v MASH (2000) - *Worker: unpaid secondee at charity not covered*

Sims, a doctor employed by an NHS Trust, was seconded most Tuesday nights to work for M, a charity dealing with prostitutes. Sims' time with M was paid for by the NHS Trust. When Sims failed to attend, as he often would, M would not complain, nor would it ask for sick notes when Sims was away ill, nor would it check on his time-keeping. Sims did not see himself as part of M but as someone who gave it services which his employer paid for. When M decided it no longer needed Sims' help, he claimed unfair dismissal under PIDA as he had previously raised concerns about financial issues. At a preliminary hearing ET held Sims' claim would fail as he was neither an employee nor a worker within PIDA. On appeal, the EAT held there was no error in law in the ET's analysis.

Smart v Citizens Advice Bureau (1999) - *Worker: volunteer at a charity not covered*

A volunteer at a charity is not made an employee by the payment of his expenses.

Smith v Age Concern Manchester (2000) - *Qualifying disclosure: suspected financial misconduct in a charity should have been investigated*

Smith was made deputy manager at a charity shop. She raised concerns, inter alia, about the misuse of petty cash and changes the new manager had made to the way furniture was accounted. This led to a breakdown in the poor relations between Smith and her manager, in consequence of which Smith was given notice. ET held that Smith's concerns were a qualifying disclosure and that her dismissal was in breach of PIDA, as those concerns were

part and parcel of the total complaint for which Smith was dismissed, even though "It was information which tended to show the commission of a criminal offence but it was not much information. It was a lead from which enquiries could and should have been pursued with diligence, particularly given the charitable status of the respondent". Award not known.

Staples v Royal Sun Alliance (2001) - Public disclosure: disclosure of breach of consumer law to a customer held reasonable

Staples joined Royal Sun Alliance's estate agency division as a part-time negotiator. Staples raised internally concerns about health and safety of customers and the way financial services were being sold. Staples subsequently mentioned one concern to a customer. ET held this disclosure was protected as [a] it concerned a breach of consumer law, [b] Staples had already raised it internally and [c] it was reasonable to tell the customer as "we can quite understand why applicant might feel obliged to inform potential customers so they would not be deceived". However on evidence, ET hold that the principal reason for his dismissal after two months was Staples' poor performance.

Vaux & McAuley v Bickerton (2002) - Disclosure to prescribed regulator

Vaux & McAuley were senior managers and were concerned that Bickerton was being asset stripped, with assistance from people who were disqualified directors. They raised their concern internally and with DTI. Bickerton's advertising of their posts amounted to constructive dismissal. ET commended Vaux & McAuley for considerable courage. As both were quickly in good jobs, awards were £13k and £30k respectively.

