

How does the Act protect people?

Under the Act, employers are not allowed to treat legitimate whistleblowers as troublemakers or ignore their concerns.

The Act protects legitimate whistleblowers from "detriments" by their employer, e.g:

- Reassignment of duties
- Failure to grant a salary increase
- Dismissal of a worker who legitimately blew the whistle is **automatically unfair**

Where someone has been victimised in breach of the Act (regardless of whether they have been dismissed or not) they can bring a claim for compensation in an employment tribunal. Awards for victimisation are **uncapped** so for instance people who lose their jobs in breach of the Act will be fully compensated for all their losses. Dismissed employees may also obtain interim relief, before their case has been decided.

N.B. confidentiality clauses and gagging clauses in workers' contracts and severance agreements are ineffective insofar as they conflict with the Act's protection.

“ Not only does the UK now have the most far-reaching whistleblower protection laws in the world, but the media are highly sensitised to this issue. Errant companies face a real threat to their public image and reputation. ”

More information about the Whistleblowers' Act is available from the Public Concern at Work's website at www.pcaw.demon.co.uk

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POSSIBLE IMPLICATIONS OF THE WHISTLEBLOWERS' ACT FOR BUSINESSES AND DIRECTORS

A whistleblowing policy?

The Whistleblowing Act does not oblige companies to set up whistleblowing policies and procedures. Having said that, it makes sense for companies to set up a clear and effective whistleblowing system to minimise the risk of an employee making a potentially embarrassing disclosure outside the company.

Workers may not be protected by the Act if they fail to comply with their organisation's whistleblowing policy.

Protection for directors

An effective whistleblowing policy can help protect directors from personal liability. (After the Barings collapse, when the bank's Group Risk Manager was banned for five years, the regulator stressed that the Risk manager had failed to blow the whistle loudly or clearly.)

Good corporate governance

Stock Exchange rules require the boards of listed companies to maintain a "sound system of internal control". An organisation that positively encourages whistleblowing demonstrates its ability and will to regulate itself and stands a far better chance of demonstrating that it is properly run and managed.

Staff regulations and conditions

To ensure that staff know what is acceptable and what is not, policies for areas such as corporate hospitality and corporate gifts may need to be clarified. Additionally confidentiality clauses written into staff contracts or staff handbooks may need to be amended to reflect the Whistleblowers' Act.

High profile legislation

As well as heightening a person's awareness of their right to speak out, whistleblowing legislation has attracted great media interest, which has been inflamed by some recent sensational news stories. Companies without adequate procedures may be inviting concerned employees to make potentially embarrassing external disclosures, with all the damage to their corporate reputation that might ensue.

Boardroom Summary

Boardroom Summaries are designed to give directors and executives a quick appreciation of new or changing issues and regulations that affect themselves or their companies. The main text provides a broad overview of the subject, with additional information on selected areas being provided in the coloured band.

The 'Whistleblowers Act'

DISCLAIMER

This Boardroom Summary aims to give you an overview of the effect which the Public Interest Disclosure Act may have on your business. It is not offered as advice on any particular issue and should not be considered as such. Therefore you should not act or refrain from acting without taking professional advice on the particular facts or circumstances which affect you.

The Public Interest Disclosure Act (The 'Whistleblowers Act') came into force in July 1999

What is the Act trying to do?

The Whistleblowers Act protects workers who report wrongdoings in their organisations, from victimisation or discrimination. (Official enquiries into disasters such as Piper Alpha showed that often staff working in these organisations had known well in advance about the dangers, but were either too scared to raise the alarm or had spoken to the wrong people or were ignored).

The Act protects responsible whistleblowing. It encourages workers to raise their concerns internally with their employers, although it also allows external disclosure (for instance to police or media) as long as there are good reasons (which are detailed by the Act) for doing so.

The Act clarifies:

- Who is protected and what can they blow the whistle about
- The protection that is provided
- Disclosing wrongdoings internally to the employer
- Disclosing wrongdoings outside the company

Who is protected and what kinds of wrongdoings can they blow the whistle about?

The Act covers all employees, trainees, agency staff, contractors, homeworkers, and also includes everyone involved in the NHS. The usual employment law restrictions on minimum qualifying period and age do not apply. It does not cover the genuinely self-employed, volunteers, the intelligence services, the army or the police. The Act protects people who raise concerns about **past, present and future** malpractices in relation to:

- A criminal act
- A failure to comply with legal duty (such as negligence or breach of contract)
- A miscarriage of justice
- Danger to health and safety
- Damage to the environment
- Deliberate cover up of any of these

AVOIDABLE CATASTROPHES

The need for the Act was highlighted by official investigations, which revealed how a number of disastrous events could have been prevented. Public inquiries showed that prior to the Clapham rail crash, a supervisor had noticed loose wiring in the station's relay room but had done nothing for fear of "rocking the boat". Similarly, workers on the Piper Alpha oil rig knew of the dangers that eventually led to the explosion, but did not want to put their jobs at risk by making a fuss. The Zeebrugge ferry disaster would have been averted had managers heeded warnings that the ferries were sailing with their bow doors open. The collapse of the BCCI and Barlow Clowes banks and the Maxwell pension scandal were all made possible by autocratic regimes where employees had little option but to turn a blind eye to malpractices.

DISCLOSING CONCERNS TO LEGAL ADVISORS

The Whistleblowers Act also protects people who share their concerns with their legal advisors. The only criterion that is necessary for this to be protected under the Act is that there is a reasonable belief that there has been malpractice.

DISCLOSING CONCERNS TO REGULATORS

The Act reinforces a person's right to make disclosures to specified regulatory bodies including:

- The Inland Revenue
- Customs and Excise
- The Financial Services Authority
- The Department of Trade and Industry
- The Office of Fair Trading
- The Health and Safety Executive
- The Environment Agency

Disclosing wrongdoings internally to the employer:

The Act signals that it is safest if workers raise their concerns about wrongdoings internally with their employer. A disclosure to their employer will be protected under the Act if the whistleblower has an **honest and reasonable** suspicion that the wrongdoing has occurred (or is likely to occur).

Disclosing wrongdoings to regulators:

The Act strengthens workers' rights to raise their concerns to regulatory bodies (see panel) where the whistleblower **honestly and reasonably** believes that the information and **the allegations contained in it are substantially true**. In these cases the concerns do not have to have been raised with the employer first.

Disclosing wrongdoings to others such as the police, media, MPs

Workers are protected under the Act where:

- They honestly and reasonably believe that the information and any allegation contained in it are substantially true **and**
- The disclosure is not made for personal gain **and**
- The disclosure is reasonable (see panel) **and**
- There is a good cause for raising concerns outside the organisation: the Act details four such "good causes" such as a reasonable fear of being victimised or of a cover up (see panel)

WHEN IS BLOWING THE WHISTLE TO OUTSIDERS LIKE THE POLICE OR THE MEDIA REASONABLE?

One important criterion for wider disclosure of concerns outside the company is that it is "reasonable". In deciding this a tribunal will consider a number of issues including:

- The identity of the person the disclosure was made to
- The seriousness of the concern
- Whether the malpractice is continuing in the organisation
- The response of the employer to a disclosure that was previously raised internally
- When a disclosure was previously raised internally, did the worker comply with the employer's whistleblowing policy

THERE MUST ALSO BE A GOOD REASON FOR SUCH WIDE DISCLOSURE...

There are four good reasons for going outside the organisation:

- The concern was raised internally or with a prescribed regulator, but has not been properly addressed
- The concern was not raised internally or with a prescribed regulator because the whistleblower reasonably believed he would be victimised
- The concern was not raised internally or with a prescribed regulator because the whistleblower reasonably believed a cover-up was likely and there was no prescribed regulator
- The concern was exceptionally serious