

Member of an LLP is a “worker” and qualifies for protection under whistleblowing legislation

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The Supreme Court has held that a former equity partner of a law firm structured as a limited liability partnership was a worker and therefore eligible for protection under whistleblowing legislation. The Supreme Court found that the partner fell within the definition of worker in the Employment Rights Act 1996 as she could not market her services to anyone other than the LLP and was a key part of the business.

Ms Bates van Winkelhof was an equity partner of Clyde & Co LLP. Junior equity partners at Clyde & Co received a profit related element of pay and a guaranteed element of pay; more senior members received a profit only element of pay. Ms Bates van Winkelhof was a junior equity partner seconded to a Tanzanian law firm, Ako Law, in 2010. In November 2010, she reported to Clyde & Co that the managing director of Ako Law had admitted that he engaged in paying bribes to obtain work and influence the outcome of cases. Ms Bates van Winkelhof reported these allegations to Clyde & Co. The following day she was dismissed by Ako Law and suspended by Clyde & Co. Shortly after, she was expelled from Clyde & Co's partnership.

Ms Bates van Winkelhof made a claim to the Tribunal that she had been victimised as a result of making allegations of bribery. The merit of Ms Bates van Winkelhof's case is yet to be considered by a Tribunal because Clyde & Co argued that, as an LLP member, Ms Bates van Winkelhof was not a worker within the definition of the Employment Rights Act 1996 and that therefore she could not qualify for protection under it, rendering her unable to claim whistleblowing protection.

A worker is defined in The Employment Rights Act 1996 as: (i) someone who works under a contract of employment; or (ii) any other contract whereby they undertake to perform work or services personally to another party whose status is not that

of a client or customer or business undertaking carried on by the individual.

The Supreme Court held that Ms Bates van Winkelhof was a worker and therefore was entitled to whistleblowing protection. Although Ms van Winkelhof was a junior partner, the Court expressly ruled out a requirement that a person must in some sense be subordinated to be a worker. As such, it seems likely that all members of LLP's are likely to be treated as workers from now on.

As a result of the Supreme Court's decision, LLP members will also become entitled to a range of benefits available to workers such as, the right to paid annual leave and limits on working time, national minimum wage and auto-enrolment into pensions.

Clyde & Co LLP & Anor v Van Winkelhof [2014] UKSC 32

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