

# The Court of Appeal clarifies the “public interest test” for whistleblowing claims.

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# The Court of Appeal clarifies the “public interest test” for whistleblowing claims.

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The Court of Appeal has, this morning, clarified that a disclosure does not need to be in the interest of the public at large in order to attract whistleblower protection. Despite the inclusion of a “public interest test” in whistleblowing legislation, a disclosure can concern only a small group of people, although that the character of the disclosure is relevant.

The Claimant, Mr Nurmohamed, was employed by Chestertons as a senior manager. He made disclosures regarding manipulation of the company’s accounts, which were modified in order to overstate costs and liabilities resulting in lower commission payments for around 100 employees (including himself). Mr Nurmohamed was subsequently dismissed and brought a claim for unfair dismissal against Chestertons.

It was submitted by Chestertons that, as the disclosure only concerned a class of employees (100 employees), it did not satisfy the ‘public interest’ requirement. The EAT had dismissed this and held that disclosure is not required to be of interest to the public at large. A further case, *Underwood v Wincanton*, widened the definition of a protected disclosure even further by holding that a disclosure affecting just four workers satisfied the public interest test.

Chestertons subsequently appealed this to the Court of Appeal who this morning handed down their judgment in favour of Mr

Nurmohamed. Disclosures about a breach of a worker's own contract can still amount to a whistleblowing disclosure, but factors that will help the worker will be:

1. The number of individuals whose interests the disclosure serves;
2. The importance of the matter being disclosed;
3. Whether the wrongdoing being complained of is deliberate, rather than inadvertent;  
and
4. The prominence of the wrongdoer (such a disclosure about an NHS payroll error affecting thousands of staff would be more likely to attract protection than a complaint about a payroll error in a small, private company).

While Chestertons' appeal foundered before the Court of Appeal, the judgment is not quite the blank cheque for workers as it may appear. If a matter complained of affects only a very small number of individuals, the Court of Appeal suggests that the would-be whistleblower would need to show one or more of:

- the matter they are complaining of being very important;
- the wrongdoing being deliberate rather than inadvertent;  
and
- the wrongdoer being a prominent individual or corporate entity.

Nevertheless, the decision does dilute significantly the impact of the inclusion of the "public interest" requirement into whistleblower laws which were intended to prevent claims premised on breaches of an employee's own rights. The practical point for employers is to carefully consider whether complaints by employees qualify for protection based on these new court guidelines and, crucially, to ensure that employment decisions for all employees are based on rational and lawful criteria, not as retaliation.

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