

World Whistleblowers Day 2024 – why you should remain confident to speak up

World Whistleblowers Day, originally created by a group of non-governmental organisations in 2019, is an annual opportunity to reflect on the importance of an individual's right to blow the whistle and the importance of the Public Interest Disclosure Act 1998 (**PIDA**) in fostering an open workplace culture and preventing wrongdoing.

Recent news stories have highlighted the poor treatment of whistleblowers across a range of sectors. In the NHS, there are claims that the careers of talented doctors and nurses have been ruined after blowing the whistle. Employees at Fujitsu were afraid of being 'dragged over the coals' had they raised concerns about the Horizon software used by Post Office sub-postmasters. It is no surprise then that potential whistleblowers still feel apprehensive about speaking up in 2024.

The Telegraph, for example, recently reported that over 50 doctors and nurses have been targeted after raising concerns about patient safety and that whistleblowing is not welcomed by management. Headlines refer to NHS managers using a 'playbook of tactics' to silence whistleblowers, "designed to break you."

However, not only in the NHS, but in every industry, it remains important for individuals to be able to raise concerns and for management to foster a culture in which they are able

to do so. A 'qualifying disclosure' must relate to:

- a criminal offence;
- a breach of a legal obligation;
- a miscarriage of justice;
- someone's health and safety being in danger; or
- potential damage to the environment.

Feeling able to raise concerns of this nature, where you have a reasonable belief that there has been a miscarriage of justice, is essential to prevent wrongdoing and individuals should be aware of the legal protection available to them when doing so.

So, by way of reminder, it is unlawful for an employer to dismiss an employee if the reason or principal reason is that they have made a protected disclosure. It is also unlawful to subject any worker to a detriment on the grounds that they have made a protected disclosure (see <https://www.bdbf.co.uk/thinking-of-whistleblowing/> for more detail about what constitutes a protected disclosure). Detriments in this context can include being marginalised, subjected to disciplinary action, overlooked for a promotion or denied a bonus. Employees who have been dismissed for whistleblowing at work or resigned in response to detrimental

treatment due to whistleblowing, may also have additional claims for automatic unfair dismissal.

There are limitations to whistleblower protection in the UK. There is no state body tasked with the oversight of whistleblowing measures, no requirement for an organisation to investigate concerns raised (save for in certain sectors, such as financial services) and no fine or other penalty/punishment enforceable against those who choose to subject the whistleblower to detriments. In addition, protection does not extend to genuinely self-employed individuals – the injustice of this distinction was recently highlighted when it became clear that, because the Post Office sub-masters were self-employed, they would not have been protected by the legislation.

We remain optimistic that despite the likely (and imminent) change of government, the principles contained in the Whistleblowing Bill 2023, which had its first reading in the House of Commons earlier this year, may be taken forward by a new Labour Government. The Bill proposed, among other things, introducing new civil and criminal offences (punishable by fine or imprisonment) for subjecting a whistleblower to a detriment and establishing an Office of the Whistleblower, an official body tasked with enforcing such punishment – thereby adding teeth to PIDA and establishing a real deterrent to the decision makers in these circumstances.

With the Labour Party's Manifesto commitment to strengthen protection for whistleblowers, any future iteration of the Bill may also see the protections of PIDA expanded to self-employed contractors who remain equally at risk of suffering from detrimental treatment, reflecting the wider protection afforded to whistleblowers in the EU through the EU

Whistleblowing Directive.

The legislation should allow individuals to feel confident to raise concerns in the knowledge that the law is there to protect them – as eloquently put by the charity Protect; *‘it is the insiders within organisations who have the power to expose wrongdoing and improve business, and society, for the better.’*

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