

SWU Trade Union Advice and Representation Officer **Julie Long** shares a piece of advice on this subject



There are two pieces of legislation that support whistle-blowers from detrimental treatment by their employer, namely the Public Interest Disclosure Act 1998 and the Protected Disclosure Act 2012.

The Public Interest Disclosure Act 1998 provides protection to 'workers' making disclosures in the public interest and allows such

individuals to claim compensation for victimisation following such disclosures. The Protected Disclosure Act 2012 encourages, and assists, people in making disclosures of improper conduct by public officers and public bodies, as well as any person who adversely affects the honest performance of a public officer or public body of their functions.

Under the provisions of the Public Interest Disclosure Act 1998 (generally known as the 'Whistle-Blowers Act') protection is given to a worker who makes a protected disclosure to a specified individual. The primary aim of the Act is to encourage the resolution of concerns through proper work-place procedures. Many organisations have a whistleblowing policy, which tells you how to raise concerns. This policy can be obtained from your Human Resources department. The policy will usually give the name of a specific person who you can speak to with regards to the disclosure.

The policy is likely to state whether or not you are allowed to raise concerns anonymously. The organisation probably wouldn't refuse to investigate a complaint just because you wanted to remain anonymous. However, generally, it will be easier for them to investigate and deal with your concerns if you identify yourself. You can, though, ask for your identity to be kept confidential, however there may be limits on this. Any matter raised should be investigated thoroughly, promptly and confidentially. The outcome of the investigation should then be reported back to you, even if no action is taken.

There are two types of whistleblowing, internal whistleblowing and external whistleblowing. Internal whistleblowing means that the whistle blower reports misconduct to another person within the organisation. An external whistle-blower is a person who reports an organisation's illegal, immoral, and/or illegitimate working practice to someone outside of the organisation.

A qualifying disclosure must be one of the six categories of subject matter specified in the Employment Rights Act 1999(see below). That is any disclosure of information which, in the reasonable belief of the worker making it, tends to fulfil one of the following criteria:

- (a) That a criminal offence has been committed, is being committed or is likely to be committed.
- (b) That a person has failed, is failing, or, is likely to fail to comply with any legal obligation to which he is subject.
- (c) That a miscarriage of justice has occurred, is occurring, or, is likely to occur.
- (d) The health or safety of any individual has been, is being, or, is likely to occur.
- (e) That the environment has been, is being, or, is likely to be damaged.
- (f) That any of the above points are being deliberately concealed.

A qualifying disclosure will be a protected disclosure if it is made in one of the six ways set out in the act. The disclosure must be made through the appropriate channels. For instance, four of these categories are to be made to named individuals, while the further two categories are subject to more stringent conditions. Disclosure must be made to one of the following persons:

- In good faith to his employer
- While obtaining legal advice (e.g. to a solicitor)
- A disclosure made in good faith to a minister of the Crown.

Furthermore, the Public Interest Disclosure (Prescribed Persons) Order describes the individuals and (bodies) to which disclosure may be made. There are some thirty-eight bodies so prescribed, including various regulatory bodies and local authorities, for example. The matters that are the subject of a protected disclosure are usually matters in which there is a significant public interest. Workers making these types of disclosures are protected from victimisation if they are revealing information of the right type by making what is known as a 'qualifying disclosure'. Which means making the disclosure to the right person, in the right way thus making it a 'protected disclosure'. A disclosure will be protected if it is made in good faith, the worker reasonably believes that the information disclosed, and any allegation made in it, are

substantially true. The disclosure must not be made for personal gain, the matter disclosed is of an exceptional serious nature, and in all the circumstances, it was reasonable for the worker to make the disclosure.

A worker does not need to prove the existence of any of the points outlined. The worker merely needs to show they had a reasonable belief that this was so. Nor does the worker have to prove that an offence has been committed. Clearly, however if a worker fails to show that they had a reasonable belief of wrongdoing as outlined above, it is likely that an Employment Tribunal would find that the worker did not have a reasonable belief.

A disclosure will not be protected if the worker commits an offence by making it. For example, in breach of the Official Secrets Act.

For a whistle-blower to obtain protection of the Act his motives for making the disclosure are also relevant. A

worker who makes a protected disclosure has the right not to suffer a detriment. If he is an employee, he has the right not to be dismissed. If he is a worker, if dismissed, he will not be able to claim unfair dismissal but could successfully argue this amounts to a detriment and therefore claim compensation.

Who should you Report Whistleblowing to?

If, you have concerns but you aren't sure how to raise them, or want advice about good practice you can call the NHS & Social Care Whistleblowing Helpline on 0800 724725. They can advise on the process but cannot deal with complaints directly.

If you are unsure of any of your employment rights or want to talk through any specific advice in relation to whistleblowing, or any other employment issue that you may wish to discuss, please do not hesitate to contact the Advice and Representation Team on 0121 622 8412.