

In 2013 changes were made to whistleblowing laws to prevent employees from gaining whistleblower protection when raising complaints about alleged breaches of their own terms and conditions of employment. However, a recent case suggests that we might be back to square one.

In *Underwood v Wincanton plc* (EAT 27 August 2015), Mr Underwood and three colleagues made a written complaint to their employer alleging an unfair allocation of overtime amongst lorry drivers. Mr Underwood was later dismissed. He issued a Tribunal claim arguing that he had been dismissed for raising the overtime complaint. He alleged that this amounted to a protected disclosure and that his dismissal was therefore automatically unfair.

To get whistleblower protection, a worker must make a qualifying disclosure and reasonably believe that it is made in the public interest.

The Employment Tribunal struck out the claim, finding that a complaint about terms of employment could not be in the public interest.

However, the Employment Appeal Tribunal (EAT) overturned the Tribunal's decision. The EAT considered another recent case, *Chesterton Global Ltd v Nurmohamed* ([2015] IRLR 614), which concerned allegations of inaccurate accounts and incorrect commission payments affecting 100 staff. These allegations raised the issue of fraud. The EAT said that it was reasonable for a worker to believe that this disclosure was in the public interest.

In *Underwood*, whilst only a small number of employees were affected by the allegations, the complaints raised by the employees vaguely suggested that overtime had been withheld from drivers who had raised concerns about vehicle safety and road-worthiness. The EAT noted these complaints might also be a matter of public interest.

The *Chesterton* case has been appealed, but is not due to be heard until October 2016. Until then, the law seems to have taken a step back and employees can pass the "public interest" hurdle if they raise issues concerning contractual matters affecting only a small group of employees.

What should you do?

Universities would be wise to take the following steps:

- ensure all grievances are fully investigated;
- review grievance procedures and ensure that they are applied consistently;
- have adequate whistleblowing policies and procedures in place;
- ensure managers are fully trained on applying these policies in practice.

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