

Are whistleblowers being protected?

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Are whistleblowers being protected?

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The charity Public Concern at Work has found that whistleblowers are not being adequately protected under the current legal regime and made a number of recommendations as to how this may be remedied.

Public Concern at Work undertook a review of all cases

involving a whistleblowing claim issued in the Employment Tribunals between 2010 and 2013. PCAW found that 68% of such cases are withdrawn or settled before trial and, of those cases which proceeded, 62% were lost or were struck out. Over £7.3 million in damages was awarded to successful claimants. This does not seem like a great deal, particularly considering that a single claimant in one of the cases received damages of £3.4 million.

It was found that claimants in whistleblowing claims are significantly more likely to succeed at trial or to settle the claim when they are legally represented. However, in the cases surveyed, 56% of claimants did not have legal representation. As such, PCAW has recommended greater access to legal aid in all whistleblowing claims to increase the proportion of people taking legal advice. Given current cutbacks in Legal Aid, the chances of that happening are extremely remote.

Of all cases in which a judgment was made, PCAW found that discrimination or harassment was the most common form of wrongdoing complained of by whistleblowers, comprising twice as many cases as did complaints about financial misconduct. Across all types of complaint, 9 out of 10 claimants raised their concerns internally in the first instance. The charity noted that it was not possible to discover the type of complaints made in cases which settle before trial, therefore they recommended that an accessible register of all complaints be created.

PCAW expressed concern at its finding that the number of whistleblowing claims issued had fallen by almost 20% since the introduction of tribunal fees in July 2013. (That is, in fact, a relatively small decline compared to the drop in, for example, discrimination cases.) It also expressed concerns about costs awards made in whistleblowing cases, finding that claimants have been ordered to pay £753,135 in costs whilst costs ordered against employers totalled a mere £183,992. As a result of these findings, PCAW recommends a change in the way

that fees and costs are approached where the claimant is a whistleblower.

Perhaps the most surprising finding is that the majority of whistleblowers in the cases surveyed worked in the private sector. PCAW suggest that this may be because complaints in the public sector, particularly in the health and care sectors, are more likely to be low-value and thus not be issued.

‘Is the law protecting whistleblowers? A review of PIDA claims’, Public Concern at Work, May 2015

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