

# Whistleblowers must identify the legal obligation alleged to be breached

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# Whistleblowers must identify the legal obligation alleged to be breached

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A whistleblower making disclosures about potential wrongdoing must express a reasonable belief that an identifiable legal obligation has been breached or will be breached. It is not enough just to say something is wrong.

Ms Korshunova was a sales executive for Eiger, a broking business. Eiger would use Bloomberg Chat to liaise with

traders, and Ms Korshunova found that Mr Ashton (the managing director) had been using her profile to speak to clients without identifying himself. Ms Korshunova said that it was wrong for Mr Ashton to impersonate her and asked IT to change her password (which Mr Ashton had said would be gross misconduct).

Some weeks later, three of Ms Korshunova's accounts were transferred to junior brokers. After two trading errors and an argument with Mr Ashton, Ms Korshunova was invited to a disciplinary hearing for 'failure to follow instructions and poor performance'. Ms Korshunova was dismissed following a disciplinary hearing which she declined to attend. The reason given for dismissal was that she had failed to carry out the reasonable instructions of a superior (in the form of misusing Eiger's equipment by changing her password and turning off her computer) and had quoted the incorrect prices to customers.

Following an unsuccessful internal appeal, Ms Korshunova brought Employment Tribunal claims alleging whistleblowing detriment in the removal of her accounts and automatically unfair dismissal on the grounds of making protected disclosures.

The Employment Appeal Tribunal found that the detrimental treatment actually came as a result of Ms Korshunova's insubordination. Whilst it was accepted that Ms Korshunova genuinely believed that Mr Ashton must have breached some legal obligation in impersonating her on Bloomberg Chat, she could not say what the obligation was. There needed to be some form of identifiable legal obligation in order to establish whether the belief was a reasonable one.

This case shows that a whistleblower must do more than express a belief that the employer's actions are wrong. A protected disclosure needs to actually set out something identifiable, whether legislation, regulatory rules or industry guidance, that the employer is in breach of.

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