

Whistleblowing: Suffering a Detriment

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To bring a whistleblowing detriment claim in an Employment Tribunal, a worker must suffer the detriment in the “field of employment”, not in a private or personal capacity.

THE FACTS

Mrs Tiplady was employed as a senior planning officer by the City of Bradford Metropolitan District Council. She and her husband had some difficult dealings with the Council in relation to a property they owned in the Bradford district. One issue related to a sewer under the property that they believed was emitting poisonous gasses, and another related to planning permission for a shed. They were unhappy with how the Council had dealt with both issues and Mrs Tiplady resigned, claiming constructive dismissal and automatically unfair dismissal under the whistleblowing legislation. She also complained that she had suffered 16 detriments because of having made whistleblowing disclosures.

The Employment Tribunal dismissed her claims, and her appeal to the Employment Appeal Tribunal was unsuccessful. She was permitted to appeal to the Court of Appeal on one discrete point. The Tribunal had held that the detriments about which Mrs Tiplady had complained related to the Council’s dealings with her as a householder and not as an employee. According to the Tribunal, whistleblowing protection given to workers is confined to detriment suffered in the employment field. Detriment to which a worker is subjected to in their private or personal capacity would not be covered. Mrs Tiplady argued that there was nothing in the wording of the legislation that limited the scope of protection to detriment suffered “in the employment field”.

Reviewing the legislation and relevant case law, the Court of Appeal agreed with the Employment Tribunal: whistleblowing protection for workers is only given to detriment suffered by the worker in the employment field. The Court of Appeal went on to consider how a detriment was to be recognised as having arisen in the employment field. It suggested asking in what “capacity” the detriment was suffered, or (to put it another way) whether the detriment was suffered by the Claimant as an “employee”. The Court of Appeal considered that this guidance was likely to be the best approach in most cases, but that there are bound to be borderline cases and its suggested approach is not intended as definitive guidance. The Court of Appeal also commented that the employment field should not be drawn too narrowly.

WHAT DOES THIS MEAN FOR EMPLOYERS?

Where a worker has dealings with their employer both as a worker and in an alternative capacity, they will need to show that any detriment was suffered in the employment field in order to bring a whistleblowing claim as a worker.

[Tiplady v City of Bradford Metropolitan District Council \[2019\]](#)

Authors



Ceri Fuller

London - Walbrook
cfuller@dacbeachcroft.com



Zoë Wigan

London - Walbrook
zwigan@dacbeachcroft.com



Hilary Larter

Leeds
hlarter@dacbeachcroft.com

