

Third party intervention did not break the chain of causation in whistleblowing detriment claim

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The Employment Appeal Tribunal (EAT) decided in the case of **McNicholas v Care and Learning Alliance and another** that the Employment Tribunal (ET) had erred when it found that a decision by the General Teaching Council for Scotland (GTCS) to investigate the claimant, following a malicious referral by her former employers (Respondents), broke the chain of causation when assessing compensation for her whistleblowing claim.

A worker has the right not to be subjected to any detriment on the ground that the worker has made a protected disclosure. In 2019, the ET upheld the claimant's claims that she had been subjected to detriments by the Respondents for making protected disclosures about nursery arrangements for a child with autism. The detriments included the Respondents making a complaint to GTCS about her fitness to teach.

The ET found that the referral to GTCS was malicious. The true motive for the referral was to discredit the claimant. As such, the tribunal could award compensation for losses flowing from the detriment subject to an intervening act breaking the chain of causation. In making their compensatory award, the ET decided that while the referral and interim report prepared by GTCS flowed from the detriment, GTCS's decision to further investigate the referral (Further Investigation) broke the chain of causation and calculated the award against the Respondents on this basis.

The EAT held that the Further Investigation was the natural consequence of the Respondents' malicious referral. This remained the effective cause of the claimant's loss meaning the chain of causation had not been broken and compensation should not be limited to losses suffered before the Further Investigation.

This case suggests that a third-party intervention will not automatically break the chain of causation. The tribunal should make a common-sense assessment of the facts when considering whether an intervening act or event breaks the chain of causation.

Key contact



Alex O'Donoghue

Trainee Solicitor

alex.o'donoghue@brownejacobson.com

+44 (0)3300452200

