Browne Jacobson

Do whistleblowing protections extend to external job applicants?

11 April 2025 Claire Rosney

In the case of Sullivan v Isle of White Council, the Court of Appeal considered whether external job applicants were protected under whistleblowing legislation.

Brief facts

The Claimant applied for two accounting roles with the council and was interviewed by a panel of three but was unsuccessful in respect of both roles.

The Claimant subsequently filed a police online crime report alleging that she had been verbally assaulted during the interview. She made allegations that a charitable trust, unconnected to the Respondent, had been taking revenue despite being a dormant company and one of the panel members, who was present at both interviews, was a trustee.

The Claimant also filed a complaint with the council's confidential safeguarding helpline, alleging that the panel had referred to her as being "mentally insane" during the interview process.

The Claimant also wrote to her MP and the council's Chief Executive. A full investigation was carried out by the council who concluded there was no case to answer. Although a right of appeal would usually be available, the council took the decision that it would not be appropriate given the extent of the investigation which had already taken place and the distress the process had caused to the staff involved.

The claimant subsequently issued an Employment Tribunal claim alleging she had been subject to a detriment on the ground she had made a protected disclosure. Both the Employment Tribunal and Employment Appeal Tribunal dismissed the claim.

What did the Court of Appeal decide?

The Court of Appeal dismissed the appeal. The court was satisfied (as were the ET and EAT) that whistleblowing protection only extends to either workers or applicants for a post with a NHS employer. As an external job applicant outside of the NHS, the Claimant did not satisfy either of these criteria.

The court also rejected the Claimant's argument that a failure to protect external job applicants generally breached the European Convention on Human Rights, specifically Article 10 (freedom of expression) and Article 14 which provides that Convention rights should be secured without discrimination on a number of prescribed grounds, including any "other status".

The Court held that an external job applicant was not in an analogous position to either a worker or an NHS job applicant.

The Court also agreed with the Employment Tribunal that any difference in treatment was objectively justified as the purpose of the legislation was to protect the public interest by ensuring disclosures of information about wrongdoing could be made and this was achieved by protecting workers and NHS job applicants.

The court was also satisfied that the measures were proportionate, in part due to the fact that Parliament had made a conscious choice not to include general job applicants within the ambit of protection.

The Court of Appeal also agreed with the EATs finding that the alleged detriment did not relate to the Claimant's job application. The Claimant's complaint that she had suffered a detriment because she had made a protected disclosure about alleged financial irregularities at a charitable trust was made as a member of the public. It was not a claim that related to employment with the council or a claim that she had been subjected to a detriment as a job applicant.

What does this mean for employers?

The decision provides welcome clarification for employers regarding the ambit of whistleblowing protections.

The case is also a good reminder of the importance of having robust and transparent recruitment processes, where decisions are clearly communicated and documented. This evidence can prove crucial if a challenge is later made as other protections, such as the right not to be discriminated against because of a protected characteristic, do extend to external job applicants.

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