

= Public Interest Disclosure Act 1998 =

The Public Interest Disclosure Act 1998 (c.23) is an Act of the Parliament of the United Kingdom that protects whistleblowers from detrimental treatment by their employer . Influenced by various financial scandals and accidents , along with the report of the Committee on Standards in Public Life , the bill was introduced to Parliament by Richard Shepherd and given government support , on the condition that it become an amendment to the Employment Rights Act 1996 . After receiving the Royal Assent on 2 July 1998 , the Act came into force on 2 July 1999 . It protects employees who make disclosures of certain types of information , including evidence of illegal activity or damage to the environment , from retribution from their employers , such as dismissal or being passed over for promotion . In cases where such retribution takes place the employee may bring a case before an employment tribunal , which can award compensation .

As a result of the Act , many more employers have instituted internal whistleblowing procedures , although only 38 percent of individuals surveyed worked for a company with such procedures in place . The Act has been criticised for failing to force employers to institute such a policy , containing no provisions preventing the " blacklisting " of employees who make such disclosures , and failing to protect the employee from libel proceedings should his allegation turn out to be false .

= = Background = =

Prior to the 1998 Act , whistleblowers in the United Kingdom had no protection against being dismissed by their employer . Although they could avoid being sued for breach of confidence thanks to a public interest defence , this did not prevent subtle or open victimisation in the workplace , including disciplinary action , dismissal , failure to gain promotion or a pay rise . During the early to mid @-@ 1990s , interest in whistleblower protection grew , partially because of a series of financial scandals and health and safety accidents , which investigations into showed could have been prevented if employees had been permitted to voice their concerns , and partially because of the work of the Committee on Standards in Public Life . In 1995 and 1996 , two private member 's bills dealing with whistleblowers were introduced to Parliament , by Tony Wright and Don Touhig respectively , but both efforts fell through . When Richard Shepherd proposed a similar bill , however , he got government support for it on the condition that it be an amendment to the Employment Rights Act 1996 rather than a new area of law in its own right . Public Concern at Work , a UK @-@ based whistleblowers charity , was involved in the drafting and consultation stages of the bill . The case of Graham Pink added to the pressure to introduce whistleblower protection legislation .

The Public Interest Disclosure Bill was introduced to the House of Commons by Shepherd in 1997 , and given its second reading on 12 December before being sent to a committee . After being passed by the Commons it moved to the House of Lords on 27 April 1998 , and was passed on 29 June , receiving the Royal Assent on 2 July and becoming the Public Interest Disclosure Act 1998 . Originally scheduled to come into force on 1 January 1999 , the Act instead became applicable law on 2 July .

= = Contents of the Act = =

Section 1 of the Act inserts sections 43A to L into the Employment Rights Act 1996 , titled " Protected Disclosures " . It provides that a disclosure which the whistleblower makes to their employer , a " prescribed person " , in the course of seeking legal advice , Ministers of the Crown , individuals appointed by the Secretary of State for this purpose , or , in limited circumstances , " any other person " , is protected . In addition , the disclosure must be one which the whistleblower " reasonably believes " shows a criminal offence , a failure to comply with legal obligations , a miscarriage of justice , danger to the health and safety of employees , damage to the environment , or the hiding of information which would show any of the above actions . These disclosures do not have to be of confidential information , and this section does not abolish the public interest defence ; in addition , it can be the disclosure of information about actions which have already occurred , are

occurring , or could occur in the future . In *Miklaszewicz v Stolt Offshore Ltd* , the Employment Appeal Tribunal confirmed that the disclosure does not have to have been made after the Act came into force ; it is sufficient for the dismissal or other persecution by the employer to have happened after that time .

The list of " prescribed persons " is found in the Public Interest Disclosure (Prescribed Persons) Order 1999 , and includes only official bodies ; the Health and Safety Executive , the Data Protection Registrar , the Certification Officer , the Environment Agency and the Secretary of State for Trade and Industry . An employee will be protected if he " makes a disclosure in good faith " to one of these people , and " reasonably believes that the relevant failure ... is a matter in respect of which the person is prescribed and the information is substantially true " . Other prescribed persons include the Scottish Environment Protection Agency , in relation to " acts or omissions which have an actual or potential effect on the environment ... including those relating to pollution " .

If an employee does make such a disclosure , Section 2 inserts a new Section 47B , providing that the employee shall suffer no detriment in their employment as a result . This includes both negative actions and the absence of action , and as such covers discipline , dismissal , or failing to gain a pay rise or access to facilities which would otherwise have been provided . If an employee does suffer a detriment , he is permitted to make a complaint before an employment tribunal under Section 3 . In front of an employment tribunal , the law is amended in Sections 4 and 5 to provide compensation , and to reverse the burden of proof ; if an employee has been dismissed for making a protected disclosure , this dismissal is automatically considered unfair . Similarly , under Section 6 , an employee cannot be given priority when discussing redundancies simply because he made such a disclosure . These sections take into account Section 7 , which notes that there is no requirement of age or length of employment before they come into effect .

Under Section 8 , the Secretary of State could pass a statutory instrument setting out the rules and limits surrounding compensation for the employee 's dismissal after making a protected disclosure ; until this is done , Section 9 provided interim remedies , which were the same as in other cases of unfair dismissal . The Secretary of State did pass such an instrument , the Public Interest Disclosure (Compensation) Regulations 1999 , but Section 8 has now been repealed under Section 44 of the Employment Relations Act 1999 . Under Section 10 , the Act applies to crown servants , excepting under Section 11 , those who are employees of MI5 , MI6 or GCHQ . The Act does exclude , in Sections 12 and 13 , serving police officers and those employed outside the United Kingdom .

= = Assessment and Impact = =

Terry Corbin , writing in the Criminal Law and Justice Weekly , notes that the result of the Act has been that many more employers have developed internal processes for reporting issues ; partially due to their desire to fix problems before they become publicly reported , and partially because if an employee chooses to not use these processes and instead act under the 1998 Act , there is a greater chance the employer can depict his behaviour as " unreasonable " . However , a survey done by Public Concern At Work showed that in 2010 , only 38 percent of those surveyed worked for companies with whistleblowing policies in place , and only 23 percent knew that legal protection for whistleblowers existed . The number of cases brought by whistleblowers to employment tribunals has increased more than tenfold , from 157 in 1999 / 2000 to 1 @, @ 761 in 2008 / 9 .

David Lewis , writing in the Industrial Law Journal , highlights what he perceives as weaknesses in the legislation . Firstly , it does not force employers to make a policy relating to disclosures . Secondly , it does not prevent employers from " blacklisting " and refusing to hire those who are known within the industry to have made disclosures in previous jobs . The complexity of the law was also criticised , as was the fact that , if such a disclosure turns out to be incorrect , the employee may be sued for libel by his employer . Volunteers and self @-@ employed people are not covered , nor are those who , in disclosing the information , commit a criminal offence . At the same time , the law does not make any provision for psychological harm caused by whistleblowing , which research shows is an increasing likelihood .