

## Unsafe and Unsound: How Citizens Suffer under the UK's Whistleblower Protection System

*by Mark Worth  
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In 1998 the UK passed the first whistleblower protection law in Europe. Policy-makers and anti-corruption activists praised the Public Interest Disclosure Act (PIDA) as “revolutionary” and “the new gold standard.” One prominent activist said the “unbelievably fortunate” event was thanks to “a whole sequence of stars and planets in happy alignment.” PIDA, one employment lawyer said, will “protect you and your job.”

Two decades later, these hope-filled prognostications have been shown to be grossly over-optimistic.

To assess the effectiveness of PIDA, we reviewed 115 whistleblower retaliation cases filed with a UK Employment Tribunal and published in 2019. The results show that only 17 percent of employees who were fired after reporting wrongdoing won their PIDA cases. None of the three employees who sought interim relief won their case, nor did the one employee who asked a Tribunal judge to be reinstated to their job.

The average case took 16.4 months to conclude – from when the retaliation began to when the Tribunal issued its ruling, our analysis found. One case persisted for six years. The average compensation for people who won their PIDA cases was £28,010 – slightly less than the average one-year salary in the UK.

Many employees lost their Tribunal cases because they could not meet PIDA's requirement to prove they were fired for being a whistleblower. This opens the door for employers to concoct phony grounds for firing whistleblowers, masking the true reason.

Tribunal case files reviewed for this report confirm that employers routinely engage in “reason shopping” to win retaliation cases. Under PIDA, judges permit employers to utilize this tactic. While hunting for alternative reasons to fire whistleblowers, employers subject them to character assassination and professional smears.

Case files also reveal that Tribunals have ruled against employees even though judges acknowledged they met the legal definition of whistleblower, were acting in the public interest and were unfairly dismissed. Vexingly, some judges found a link between the whistleblowing and the dismissal, yet still ruled against the employee.

In one case a judge ruled against an employee because the person had a “suspicion” but not a “belief” that wrongdoing had occurred – without explaining the difference.

It is easy to understand why one victimized employee called the UK’s whistleblower protection system a “dead-end labyrinth.”

The data and case outcomes presented here plainly illustrate the major shortcomings of PIDA and the UK’s whistleblower protection system itself.

PIDA’s drafters neglected to include in the law actual mechanisms to stop or even deter reprisals. Because PIDA lacks this authority, it essentially serves as a trap for employees who think they will be shielded from adverse consequences. Rather, what they discover is that the road to compensation and redemption is long, costly and at best uncertain.

As proof of PIDA’s lack of protective measures, whistleblowers first must suffer repercussions at work before the benefits of the law kick in. The law only gives employees the opportunity to exercise their rights *after* they have suffered retaliation – and after their jobs and perhaps their careers have been ruined.

By way of analogy, rather than giving whistleblowers a seat belt to prevent them from being harmed in the first place, PIDA provides an emergency room in hopes of patching up the wounds.

Presented below in Table 1 (below) are results of our analysis of 115 whistleblower retaliation cases published in 2019.

**Table 1**  
**Outcomes of whistleblower retaliation cases filed in UK Employment Tribunals under the Public Interest Disclosure Act; final rulings published 2019**

Win-loss record in final Tribunal hearings	16 wins / 78 losses 17.0% win rate
Win-loss record in interim relief cases	0 wins / 3 losses 0% win rate
Employee dismissals reversed	0 wins / 1 loss 0% win rate
Average financial relief for victimized employees	£28,010
Range of financial relief for victimized employees	£4,594 to £48,513
Average time from retaliation to final ruling	16.4 months
Range of time from retaliation to final ruling	2 to 72 months

Source: Analysis by European Center for Whistleblower Rights and Whistleblowing International, based on Employment Tribunal case files published by GOV.UK – <https://www.gov.uk/employment-tribunal-decisions>

## How Judges Rationalize Ruling against Whistleblowers

An in-depth analysis of 115 Employment Tribunal case files reveals that the major gaps and loopholes in PIDA place victimized employees at a tremendous disadvantage in court. The law grants judges vast leeway to reject retaliation claims by agreeing with employers' fabricated reasons for firing whistleblowers, denying the connection between whistleblowing and dismissal despite overwhelming evidence, telling employees they filed their claims too late, and deciding disclosures were not in the public interest.

Perhaps most damaging, PIDA requires employees to prove they were fired because they blew the whistle. This is a near-impossibility in real-life situations. Only the most foolish manager would confess to an employee that he or she was fired for reporting misconduct. Lacking such an evidence, employees have great difficulty proving this was the reason.

Contrary to the employment lawyer's promise in 1998 that PIDA would "protect you and your job," Tribunal case files expose a system in which the deck is firmly stacked against whistleblowers.

Here are excerpts of some of these questionable Tribunal rulings, broken down by category:

### ***ET judges ruled that employees who reported wrongdoing actually were fired because of poor relationships with managers:***

- "there appeared to be a decline in the professional relationship"
- there was a "dysfunctional situation" that "could not continue as it was," and "poor relationships"
- "the true reason(s)...were general concerns as to working relationships... While not dealt with fairly, this cannot constitute a detriment of the grounds of protected disclosure."
- "We find that the principal reason for the dismissal was the respondent's breach of the implied term of mutual trust and confidence... (W)e do not find that the principal reason for the dismissal was that the claimant made a protected disclosure... We...conclude that the claimant was constructively dismissed from her employment with the respondent... We find that...the dismissal was unfair."
- "the...decision was a response to the claimant's behaviour...and...was not due to the claimant's protected disclosure. We find that the working relationship had become untenable.... (T)he claimant has not been subjected to a detriment on the grounds that he made a protected disclosure"
- "I am satisfied that the respondent has proven that the reason for dismissal was a mismatch between the claimant's management style and the expectations of the respondent... the disclosures were not the principal reason for dismissal."

### ***An ET judge ruled an employee only had "reasonable suspicions" but did not "reasonably believe" wrongdoing had occurred – without explaining the difference:***

- "unfortunately for the claimant, the legislation does not protect those who raise reasonable suspicions of wrongdoing, but only those who disclose information which they reasonably believe tends to show wrongdoing."

***An ET judge ruled an employee's disclosure was not in the public interest:***

- “The Tribunal fully accepts that poor standards in a house where people with learning disabilities live or are supported can amount to a matter of public interest. Here however, the discrete individual allegations upon which the claimant relies, do not amount to being made in the public interest.”

***An ET judge ruled an employee waited too long before filing a retaliation case:***

- “Any whistleblowing detriment allegations...are...long out of time.”

***ET judges ruled that employees who reported wrongdoing actually were fired for other reasons:***

- “There is clearly a causal link between the matters forming part of the reason for dismissal and the protected disclosures... (However) the protected disclosures did not materially influence the decision to dismiss the claimant.”
- “the claimant...reasonably believed (the disclosure) was a matter of public interest...(But) we are not satisfied there is any causal connection with any of his protected disclosures.”
- “the respondents did not subject the claimant to any detriment...done on the ground that the claimant had made the said disclosures... The respondent unfairly dismissed the claimant...and the claimant's claim of unfair dismissal is well-founded and succeeds. Notwithstanding,...she was at significant risk of being fairly dismissed in consequence of which the tribunal finds that the claimant's compensatory award will be reduced by 60% to reflect that risk.”
- “There was no evidential foundation for the allegation that...the protected disclosures...played any part in the decision to dismiss... The Tribunal found however that the dismissal was unfair.”
- “We...find that (he) made a protected disclosure. (But) there was no causal link” between the disclosure and the change in his working arrangements. “We are not satisfied that in fact (he) did suffer any detriment.”
- “There was no change of treatment, of the type which sometimes entitles a Tribunal to draw the inference that the making of the disclosure had some bearing on the treatment... (T)here is no causation between the making of any disclosure and the detriment complained of.”
- “We...find that (he) made a protected disclosure. (But) there was no causal link” between this and the change in his working arrangements... “We are not satisfied that in fact (he) did suffer any detriment.”
- “We accept that the claimant may have thought...the disclosure tended to show a breach of a relevant legal obligation... The detriments she allegedly suffered were because of the way in which her email was worded...the tone, syntax and grammar... We agree with the respondent that this is one of the rare cases where even if the claimant were found to have whistle blown, there is no causal link between that and the detriment.”
- The Claimants “made protected disclosures” that were “in the public interest.” But they were not “subjected to detriments on the ground that they made protected disclosures... The Claimants were not unfairly or wrongfully dismissed.”
- “We found nothing at all in the evidence suggesting any link whatsoever between anything any of the four of them did that was to the claimant's detriment and any of his alleged or actual protected disclosures.”

- There is a “lack of any detriments having been caused by the protected disclosures in question. We also conclude that the making of those disclosures was not the reason, or principal reason, for the Claimant’s resignation... The Claimant was not well treated by the Respondent, but the failures of the Respondent had nothing to do with the fact that some of the issues raised by the Claimant were protected disclosures.”
- “The claimant said that he had been made a scapegoat. This was clearly an extremely poorly performing care home which was failing in its duty of care to the vulnerable residents. This was accepted by the witnesses... The Tribunal is satisfied that there were a number of protected disclosures by the claimant. However, it is also satisfied that these disclosures were not the reason or principal reason for the claimant’s dismissal.”

## How to Fix a Broken System

A study shows the UK’s Public Interest Disclosure Act contains only 37 percent of international standards for whistleblower protection legislation. When compared against 26 standards, PIDA scored a “0” in 13 of them, concluded the study by Thomson Reuters Foundation and Blueprint for Free Speech.<sup>1</sup> This is well below what would be expected of the “gold standard” for protecting whistleblowers.

PIDA must be completely overhauled in order to meet these standards. If not, employees will continue to suffer reprisals – simply because they saw something wrong and reported it.

In order to improve the UK’s whistleblower system, the European Center for Whistleblower Rights and Whistleblowing International recommend:

- introducing a rapid-response system enabling employees to obtain a protection order from an administrative agency within a matter of days, without the need to go to court
- establishing a specialized public agency receive whistleblower disclosures and protect employees from retaliation
- including civil, and potentially criminal, penalties for retaliators and for those who violate whistleblower protection laws
- placing the full burden of proof on employers to demonstrate that adverse consequences were not related to an employee’s act of whistleblowing
- closing legal loopholes that permit employers to engage in “reason shopping” and character assassination
- requiring government agencies and large companies to establish whistleblower disclosure channels and frameworks
- requiring regulators and investigative agencies to follow up on disclosures
- establishing financial rewards for whistleblowers whose disclosures lead to the recovery or saving of funds, or the fining of guilty parties
- expanding the list of crimes and misconduct that workers are permitted to disclose
- broadening protections by lowering the burden for employees to report misconduct directly to the media and the general public.

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<sup>1</sup> Wolfe, Simon; Worth, Mark and Dreyfus, Suelette, “Protecting Whistleblowers in the UK: A New Blueprint,” Thomson Reuters Foundation and Blueprint for Free Speech, 2016.

The **European Center for Whistleblower Rights** and **Whistleblowing International** are non-profit organizations that support and advocate for whistleblowers, investigate corruption cases, advocate for stronger whistleblower laws and rights, and work to hold guilty parties to account.



**Mark Worth**  
**Executive Director**  
(+49) 176 630 94993  
(+49) 30 450 89219  
Berlin, Germany  
mworth@whistleblower-rights.org  
Skype: quinn168

