



Can an employer decide if an employee has blown the whistle?

No, said a recent decision of the Court of Appeal. In that case, both parties accepted that the Claimant, Dr Beatt, was dismissed because of disclosures he had made to his employer, Croydon Health Services NHS Trust. If these were protected disclosures, evidently the dismissal would be automatically unfair.

These disclosures related to the health and safety of patients and therefore they were qualifying disclosures. However, the NHS Trust argued that they were not protected disclosures as the disciplinary manager believed that they were not made in good faith, believing that they were without merit and made for an ulterior motive. The NHS Trust therefore suggested that even if objectively the disclosures were in fact made in good faith, the disciplinary manager's subjective view should be deciding factor.

In this way, the NHS Trust likened the situation to an employer who reasonably believes that an employee has stolen from it, in which case a dismissal can be fair, even if it later transpires that the employee had not in fact stolen anything.

However, the Court of Appeal did not accept this argument. It held that the requirement for the disclosure to be in good faith (or under the new legislation, in the public interest) is an objective test and the disciplinary manager's subjective view is not relevant; a subjective test would in many cases deprive the legislation of its intended protection.

Given the Tribunal had already found that the disclosures were objectively made in good faith, and the principal reason for the dismissal was the making of the disclosures, the Court of Appeal upheld the Tribunal's finding that Dr Beatt's dismissal was automatically unfair.