

Ministers face growing pressure to overhaul whistleblower legislation after a Court of Appeal edict highlighted serious gaps which could threaten public safety.

Lord Justice Elias, one of England's most senior employment tribunal judges, ruled that existing legislation only protects whistleblowers from retribution by their employer and does not extend to reprisals or bullying by fellow workers. This is in stark contrast to claims made by the Government which has repeatedly dismissed claims from whistleblowers that the law is inadequate.

Lord Elias's pronouncement came as part of a judgement involving three Manchester nurses who claimed that their employer, NHS Manchester, failed to protect them from bullying and harassment by colleagues after they blew the whistle on another's nurses trumped up qualifications.

throwing out called on Parliament to "remedy" the inadequate protection as it was not for the court to engage in "wholesale rewriting of the stat NHS

The judg

Parliament, and not the courts, must fill the 'lacuna' in the existing legislation which means employers are currently not responsible for protecting whistleblowers from bullying and harassment by their fellow colleagues.

responsible for One of England's most senior employment judges highlighted a "lacuna" in Parliament he Government must strengthen laws in order to ensure whistleblowers cannot be victimised by colleagues.

The judgments

Rachel Harrapp from ed

Health Minister Lord Howe said:

"We want to see a culture in the NHS where whistleblowers feel able to raise legitimate concerns without fear of repercussions or reprisal.

"We are considering whether we need to do more to protect whistleblowers following this judgement. It was a complex case and we must consider its implications fully before we decide the way forward.

"In the meantime we have already strengthened protection for whistleblowers and will continue to provide practical support, for example through a helpline which offers impartial legal advice in confidence."

## Background

The Department holds a contract with the independent charity Public Concern at Work to provide this helpline for staff who wish to raise concerns.

It is staffed by lawyers and offers impartial advice on whistleblowing law and all calls are in strictest confidence.

The helpline is available between 9.00 am and 5.00 pm Monday to Friday on 020 7404 6609, and calls are charged at standard rates.

A Department for Business spokesperson said:

"The Public Interest Disclosure Act is designed to provide an appropriate level protection for whistleblowers who have reported their concerns to the employer or the appropriate regulatory authorities. We are considering the implications of this judgement. There are no current plans to review PIDA at this current time."

A spokesman for NHS Manchester said: "NHS Manchester is pleased with the finding of the Court of Appeal, but as other aspects of the case remain subject to legal proceedings it would be inappropriate to comment further."

Peter Walsh from the patient safety charity AvMA said:

"This judgement is very worrying for patient safety and is irrational. It seems any trust can now get away with it if the harassment of whistleblowers comes from employees rather than the trust directors themselves. It is doubly worrying at a time when the Government are making it more difficult for employees to take forward an employment dispute anyway. Everyone says they accept that whistleblowers need to be protected, but the Government's reliance on the PIDA and on recently announced fine words in the NHS Constitution are woefully inadequate. Most would-be whistleblowers are deterred without going any where near an employment tribunal. This is why the formation of the new organisation supporting NHS whistleblowers and seeking changes- "Patients First" - is so important. AvMA is proud to be working in partnership with NHS whistleblowers - a powerful statement about how NHS whistleblowers and patients share the same agenda - patient safety and justice."

Re: Stafford, look at Helene Donnelly 07.10.11 Also the following

It is important to note that throughout this period [check - or only from 2007?], the Trust had a whistleblowing policy in place. However, it appears that the introduction of the policy was not accompanied measures to increase awareness amongst staff or training. Dr Singh was only "vaguely aware" of a whistleblowing policy (LiveNote 16.02.11, 144) and neither Dr Nakash (LiveNote 01.03.11, 63 - 64) or Dr Turner (LiveNote 02.03.11, 24) knew of it. Kath Fox, a long term employee, confirmed that she received no training in whistleblowing (LiveNote 10.02.2011, 180:13).

Re Patients First, see their website: <a href="http://www.patientsfirst.org.uk/">http://www.patientsfirst.org.uk/</a>  
I also enclose the flyer for the launch / seminar we are putting on with them.

Public Concern at Work, the whistleblowing charity, is calling for a government review of the legislation that protects whistleblowers as a result of a Court of Appeal ruling handed down today. The charity says that the judgment will mean that there is a gap in the legal protection for whistleblowers in the employment tribunals.

The case involved three nurses who claimed to have suffered because they blew the whistle at NHS Manchester (primary care trust). The nurses were concerned a colleague had falsely claimed to have certain qualifications. They raised this with senior management who admonished the colleague for having exaggerated, but took no further action. The nurses questioned this decision and claimed to have suffered reprisals as a result.

The Court of Appeal found against the nurses saying that even though the Trust could and should have done more to protect them, the decisions taken by the Trust were not because of the whistleblowing. Significantly the Court of Appeal found that employers are not vicariously liable for retaliatory acts of other workers.

The charity says this will inevitably mean that there is no longer adequate protection for whistleblowers under the Public Interest Disclosure Act, the law enacted in 1998 to protect those who report wrongdoing or malpractice in the workplace.

Cathy James Chief Executive of PCaW said: "We believe there is now a strong case for a thorough review of this legislation by the Government. This ruling means that an employer who does not do enough to protect staff from retaliation can hide behind their own inaction and escape liability. This is not good enough and may mean that workers (and particularly healthcare workers) stay silent when faced with the risks of blowing the whistle.

All this occurs at a time when the Public Inquiry into high death rates at Mid-Staffordshire NHS Foundation Trust is focussing on the vital role health professionals can play when they speak up to protect patients. The law should reflect the very sensible position that individuals should be protected if they are victimised by their colleagues, if we want to encourage workers to speak up. Unions, regulators and the business community need to ask the Government to revisit this vital issue and we would strongly urge the Government to close this loophole as a matter of urgency".

Jennie Fecitt, clinical coordinator for three walk-in centres in South Manchester since 2006, assessing and diagnosing and discharging patients.

Nurse with 23 experience.

In early 2008 - claiming to be dual qualified and other post-graduate qualifications - told me, as part of a skills analysis, I was student link nurse so had to provide university with staff profiles,

Primary care nurse post, required a register nurse training,

When Annie came to em - making false claims, had checked on NMC register, confirmed that he was only child trained, this is serious, should report to your employer. Line manager not concerned; emailed NMC again - not being taken seriously, NMC and RCN told me to blow the whistle, what we didn't realise is that senior managers knew he didn't have correct qualifications two years previously -

Within three weeks of his appointment, hadn't gone through normal recruitment process, clinical nurse dismissed as a result. But Mr Swift's job was not changed - we didn't know until the employment tribunal -

Professor Maddock said no proper assessment was made to deem him competent - there is a risk.

I was his line manager, on the surface he appeared competent, I was more concerned about the dishonesty. but hold a public office position with NMC - he'd breached his integrity - falsified qualification

Resigned before any formal assessment was done.

When I alerted my line manager on 5 March - Mr Swift denied this and then threatened me over the phone, I was really worried about this individual, decided to pursue it.

Shutting doors in our faces, being subordinate, compromising service, my daughter received a threatening phone call - will burning f\*\*\* house down, had my management duties removed,

They were convinced that this was a witch nut - we kept reporting that we were being victimised, but nothing happened. All three took out formal grievances, we were being bullied, NHS Manchester parked all three,

In June 2008 Jennie and Annie were redeployed, Felicity's hours were stopped, and Danny Swift came back to the walk-in-centre.

Jennie Fecitt was signed off with stress as a result of bullying -

Had it been nipped in the bud then, we would never have to be redeployed - that's what's so upsetting, acknowledged that didn't do enough, but redeployment wasn't to do with the whistleblowing but about the malfunctioning team. Their own failures put them in a position so had to employ us- employers can use this as an escape route.

It's about the organisation saying sorry and being accountable and creating a culture that makes it safe to raise concerns - didn't want to take responsibility for us or their own actions.

Original ET judgment in January 2010 - sent an email to more than 2,000 staff members saying whistleblowers had been dismissed.

Annie is now a reverend and TA volunteer; Felicity is now working as GP practice nurse; Jennie redeployed me, felt like being sent to Coventry for 20 months,

So disappointed that an NHS organisation has sued this - sends out stark message to NHS STAFF. DISAPPOINTING AS JUDGEMENT IS, hope now that this will trigger immediate review of the legislation, particular after MID Staffs, recognised that people don't feel safe to blow the whistle, but is not being monitored - review legislation and a monitoring system so that an external organisation can review - if any good can come out this judgement, parliament will serious review and not put it on back burner. Employers may well use our judgment to avoid protecting whistleblowers, for NHS Manchester to use taxpayers money at a time like this, is really disappointing.

This has had a significant impact on all our families, takes up your whole life, we can put our heads on our pillows at night knowing we put our patients first. We have no regrets about what we did; we've been disappointed by the response of our managers, but would do the same again. we always hoped Danny would get the support he needed, never been personal. If you have concerns, follow your codes of conduct,

"This case is important because it highlights the limitations of current whistleblower protection. An employer can only be held legally responsible for the actions of its employees if those actions are unlawful, and there is currently no personal liability for employees who victimise a whistleblower. The judges were evidently sympathetic towards the nurses in this case and commented that they had acted properly throughout. However, the judgement was clear that if the current position is not satisfactory, this can only be dealt with through Parliament changing the law. It could have rippling effect that makes health professional go more into their shells - follow codes o

Gwyneth Williams from Collyer Bristow,

Solicitor

They imported discrimination law which exists in EU context whereas PIDA is home grown legislation -