

**Insights**

## **WHISTLEBLOWING - WHO DECIDES WHAT'S IN THE PUBLIC INTEREST? ELENA BIBESCU V JENNERS**

Mar 31, 2026

### **SUMMARY**

This case is both a reminder of the issue of reasonable belief in whistleblowing cases, particularly in relation to the public interest test, and the importance of clear documentation and evidence regarding performance issues.

Bibescu (B) was employed by Jenners. During B's employment, concerns were raised around B's performance. These concerns continued and, as a result, Jenners appointed an independent contractor to review B's work. B was unhappy about this and investigated the contractor. B discovered the contractor/investigator was disqualified from being a director of a company but still appeared as director of a company connected to his wife. B also found that he was not a member of the ACCA. B raised these issues with Jenners in a meeting on 8 June 2020. After this, B continued to perform poorly and was dismissed on 11 June 2020 - her performance issues were evidenced and well-documented.

However, B claimed the matters she raised with Jenners on 8 June 2020 were protected disclosures, that she was a whistleblower, and was dismissed for that reason.

Accordingly, following her dismissal, B brought claims for automatically unfair dismissal for whistleblowing, a whistleblowing detriment claim, and a health and safety dismissal claim.

The tribunal dismissed both the automatic unfair dismissal claim and the health and safety dismissal claim. It dealt with the legal issue of protected disclosures and the public interest test (see below) but, according to the EAT, seemed to lose sight of the actual detriments B suffered.

B appealed, including on whether her disclosures qualified for protection from detriments and on the tribunal's conclusions about the reasons for her dismissal. B claimed her dismissal was not performance related, it was a result of her protected disclosures.

The outcome of the appeal was a mixed bag:

- The EAT held that the tribunal were correct in recognising that its task was to identify the “principal” reason for B’s dismissal, and that, based on the solid evidence provided by Jenners regarding B’s performance, the conclusion that the dismissal was for performance issues rather than whistleblowing was both rational and based on the evidence.
- The tribunal did not deal with the detriment complaint and, critically, failed to make factual findings about whether B herself reasonably believed that her disclosures were in the public interest, regardless of her motives or otherwise. The public interest test depends on the reasonable belief of the individual. Even if the issue is not actually in the public interest, the individual may hold a reasonable belief that it is, and that would be sufficient to pass the legal test.
- On the public interest test specifically, the EAT noted it was unclear what the tribunal concluded about B’s state of mind and her reasonable belief - the tribunal seemed to substitute its own view of reasonableness rather than assessing whether B’s belief (in the disclosures being in the public interest) was reasonably held.
- The tribunal failed to consider B’s state of mind at the material time in relation to whether B reasonably believed that the information she shared tended to suggest that any “wrongdoing” had occurred or was likely to occur.

Accordingly, the appeal on detriment was upheld and remitted to a fresh tribunal for consideration.

The two takeaways from this case are that (a) solid evidence and record keeping of poor performance is very important in deciding the principal reason for dismissal and (b) that public interest in whistleblowing cases is in the eye of the beholder, it is the individual’s reasonable belief that counts, not the factual position, or the view of the tribunal.

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*If you would like to discuss this case further or have any queries about its implications, please get in touch.*

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