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# WHISTLEBLOWING

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# MISS X v SAXTON 4X4 LIMITED

## 320064/2016

- Disclosure of sexual assault to employer
- Employer became aware Miss X had taken and supplied class A drugs at / after work xmas party
- Miss X subject to disciplinary proceedings, which included uncomfortable questioning about the sexual assault.
- Outcome?

# Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436

- Guidance from CA on requirement for disclosure of information
- Purported disclosure - *“Since the end of last term, there have been numerous incidents of inappropriate behaviour towards me, including repeated sidelining, and all of which I have documented.*
- ET said it did not disclose any information. Instead it made allegations.

# **EAT dismissed appeal but said...**

- **NO RIGID DICHOTOMY BETWEEN INFORMATION AND ALLEGATIONS**
- CA AGREED
- **CONTEXT ALSO HIGHLY IMPORTANT**

# Ibrahim v HCA International Ltd

**UKEAT/0105/18/BA**

- C complained of false rumours of breaching patient confidentiality
- ET - no disclosure because hadn't identified breach of a legal obligation
- EAT - may not have used word defamation but clear from his allegation
- But any other potential issue with his claim?

# Day v (1) Lewisham and Greenwich NHS Trust and (2) Health Education England [2017] EWCA Civ 329

- Trainee doctor made protected disclosures against HEE
- ET – struck out claims on basis HEE not his employer under s43K(2)(A). EAT agreed.
- CA – allowed appeal. (1) Whistleblowing legislation to be given a **PURPOSIVE CONSTRUCTION** (2) Doctor can in principle be employed by both.

# Mid Essex Hospital Services NHS Trust v Smith [2018] 3 WLUK 79

- C employed as a nurse for 28 years without complaint
- Trade union rep throughout employment
- Made a series of protected disclosures and trust dismissed him
- ET felt C regarded by management as a nuisance and rejected suggestion he had been dismissed for SOSR.



## EAT said

- ET entitled to reject Trust's case that dismissal was related to conduct but should have considered Trust's alternative case that principal reason was decision maker's view of C as a nuisance
- Although being a nuisance due to union activities was equally unattractive, there had been no complaint of automatically unfair dismissal on that basis.

# **Jesudason v Alder Hey Children's NHS Foundation Trust**

**UKEAT/0248/16/LA 2018**

- Consultant paediatric surgeon – complained about colleagues' professional competence and general conduct etc.
- Dissatisfied with outcome of investigation report
- Issued ET proceedings for whistleblowing detriment
- Interim injunction to prevent panel convening to consider termination of contract.

- **ET – disclosures did not satisfy reasonableness requirement**

- Disclosures repeated older criticisms – seriousness had diminished because they were old failures that had been reported and actioned. Unlikely to recur.

- EAT agreed and dismissed perversity argument that several concerns remained uninvestigated - they had not been identified in list of issues under heading of reasonableness.

# Thank you

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