

Worker status, whistleblowing and trade union rights

IER CASE LAW UPDATE 2026

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Maritime and Coastguard Agency v Groom

[2026] EWCA Civ 6

- Martin Groom was a Coastguard Rescue Officer
- Claim: right to be accompanied in a disciplinary hearing
- Worker status: section 230(3)(b) of the Employment Rights Act 1996

Relevant Documents

- The Volunteer Handbook
- Code of Conduct
- The remuneration document

Worker Status

- Not obliged to attend work on any particular occasion
- But if he did Mr Groom was:
 - (a) bound to obey reasonable management instructions
 - (b) entitled (although not obliged) to claim “remuneration.”
- Mutuality of obligations
- Elias LJ in *X v Mid-Sussex CAB* [2011] ICR 460: “volunteers come in many shapes and sizes, and it cannot be assumed that all will have the same status in law...”

Rice v Wicked Vision [2025] EWCA Civ 1466

Automatically unfair dismissal – whistleblowing: section 103A of the Employment Rights Act 1996:

- The reason or principal reason for dismissal
- Compensation: basic and compensatory award (financial loss)

Detriment claim – whistleblowing: section 47B of the Employment Rights Act 1996:

- *Fecitt v NHS Manchester* [2012] EWCA Civ 1190: did the protected disclosure materially influence (in the sense of being a more than trivial influence) the employer's treatment of the worker.
- Financial loss and injury to feelings.

Section 47B of the Employment Rights Act 1996

47B Protected disclosures.

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

(1A) A worker (“W”) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

- (a) by another worker of W’s employer in the course of that other worker’s employment, or
- (b) [...]

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker’s employer.

[...]

(2) This section does not apply where—

- (a) the worker is an employee, and
- (b) the detriment in question amounts to dismissal (within the meaning of Part X).

Wicked Vision: The Court of Appeal Judgment

- The decision in *Timis v Osipov* [2019] ICR 655
- The analysis of the Court of Appeal in *Wicked Vision*
- Appeal to be heard by the Supreme Court: 21 May 2026
- Why does this matter? Practical Examples.

Sullivan v Isle of White [2025] IRLR 520

- Ms Sullivan applied for posts with the Isle of White Council
- She sent a letter to her MP.
- She made a complaint to the Council. The complaint was investigated and found to be unsubstantiated.
- The Council did not arrange for the complaint to be reviewed by another officer in accordance with the Council's policy.
- Ms Sullivant made a complaint to the ET. She alleged that the Council had failed to offer her this further review because she had made a disclosure of information.

Who can bring a whistleblowing claim?

- Section 47B of the Employment Rights Act 1996: **A worker** has a right not to be subjected to a detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.
- Applicants for NHS posts
- During the passage through Parliament of the Small Business, Enterprise and Employment Act 2015 an amendment was proposed to extend the scope of protection to all job applicants. The proposed amendment was the subject of debate and the subject of a vote. That amendment was rejected.

The decision in *Sullivan*

- On the “ordinary” interpretation of the legislation, Ms Sullivan did not come within the scope of protection for whistleblowers. She was not a worker, and not an applicant for an NHS post.
- Ms Sullivan argued that the legislation was not compatible with Article 10 of the European Convention on Human Rights (“the ECHR”) read with Article 14 of the ECHR.
- Ms Sullivan’s appeal failed. The Court of Appeal considered the legislation was compatible with the ECHR.

Ryanair DAC v Morais and others [2025] ICR 863

- The Claimants (pilots) participated in strike action
- The employer unsuccessfully sought an injunction to prevent this strike action on the basis that it was unlawful under Part V of the Trade Union and Labour Relations (Consolidation) Act 1992
- The employer withdrew concessionary travel benefits
- Claim under the Employment Relations Act 1999 (Blacklists) Regulations 2010

Regulation 3 of the Blacklisting Regulations

(3) General prohibition

(1) Subject to regulation 4, no person shall compile, use, sell or supply a prohibited list.

(2) A prohibited list is a list which

- (a) contains details of persons who are or have been members of trade unions or persons who are taking part or have taken part in **the activities of trade unions**, and
- (b) Is compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers.

(3) Discrimination means treating a person less favourably than another on grounds of trade union membership or trade union activities.

The activities of trade unions

- Taking part in strike action falls within the ambit of regulation 3
- Bean LJ at [50]: “....*Strike action must be official, in the sense of being organised or endorsed by the union under its rules, but...I see no basis for importing into the Blacklisting Regulations a requirement of conformity with the balloting requirements of Part C of the 1992 Act...*”
- In any case, Ryanair’s attempt to re-litigate the lawfulness of the ballot was an abuse of process.

New provisions: detriments on grounds of taking industrial action

- Section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992.
- Right not to be subjected to a detriment if the act or failure takes place for the sole or main purpose of prevented or deterring him from taking part in the activities of an independent trade union at an appropriate time.
- An appropriate time: (a) outside working hours (b) inside working hours if in accordance with arrangements agreed with or consent given by the employer.
- *Mercer v Alternative Future Group Limited* [2021] ICR 1598

New Provision: The Employment Rights Act 2025

New provision inserted into the Trade Union and Labour Relations (Consolidation) Act 1992

236A Detriment on grounds of industrial action

(1) A worker has the right not to be subjected as an individual to detriment of a prescribed description by any act, or any deliberate failure to act, by the worker's employer, if the act or failure takes place for the sole or main purpose of preventing or deterring the worker from taking protected industrial action, or penalising the worker for doing so.

(2) For that purpose, a worker takes protected industrial action if the worker commits an act which, or a series of acts each of which, the worker is induced to commit by an act which by virtue of section 219 is not actionable in tort.

Thank you

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