

News

Small groups can bring valid whistleblowing claims, rules Court of Appeal

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By **Annie Makoff**

Group of 100 estate agents met public interest requirement, says landmark decision

The interests of a small group are still enough to pass the public interest test, the Court of Appeal has decided in a landmark whistleblowing case.

In handing down its decision in *Chesterton Global Ltd and another v Nurmohamed* yesterday, the court dismissed an appeal from estate agent Chestertons, which argued that the disclosure of confidential profit and loss figures by former senior manager Mr Nurmohamed had not been in the public interest.

Nurmohamed had raised concerns that Chestertons' accounts had been deliberately manipulated under a new commissioning structure, leading to reduced commission for himself and 100 other managers. After being dismissed, Nurmohamed brought an unfair dismissal claim where he argued that his disclosure of the accounts had been in the public interest.

After both the employment tribunal and Employment Appeal Tribunal found in Nurmohamed's favour, Chestertons argued to the Court of Appeal that the previous hearings had been distracted by the relatively small number of people affected and should have looked instead at the nature and background of the disclosure.

The public interest test was introduced into whistleblowing law in June 2013 as part of wider changes to the Employment Rights Act 1996. It was intended to prevent workers using whistleblowing laws to make personal grievances about their contracts and placed the onus on employees to prove that they reasonably believed their disclosure was made in the public interest.

"This decision makes it clear that what is or is not in the public interest is not just about the numbers of people affected," said Glenn Hayes, employment partner at law firm Irwin Mitchell. "Other factors must also be in play. The identity of the whistleblower is also important and the court suggested that, the more prominent the whistleblower, the more likely the disclosure will be in the public interest.

"Similarly, the nature of the wrongdoing is also relevant; something that is done deliberately is more likely to be in the public interest than if it was inadvertent, even if it affects the same number of people."

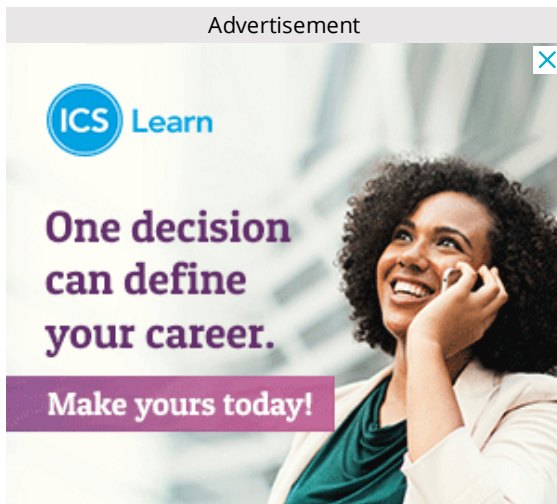
Beverley Sunderland, managing director of Crossland Employment Solicitors, added: "The factors identified by the Court of Appeal mean that complaints about workers' individual contracts are unlikely to qualify as whistleblowing unless the complaint is something significant such as the working hours of junior doctors. Here,

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The appeal also heard from whistleblowing charity Public Concern at Work (PCaW), which intervened in the case and argued that whistleblowing laws were designed to protect workers from repercussions should they need to bring wrongdoing to the attention of the courts.

Cathy James, PCaW's chief executive, said: "We are pleased that the Court of Appeal has reached the right decision in this case. It is obviously desirable that the law protects workers who reasonably raise wrongdoing, rather than trips them up with technicalities and leaves them exposed to retaliation or uncertainty as to whether they are protected."



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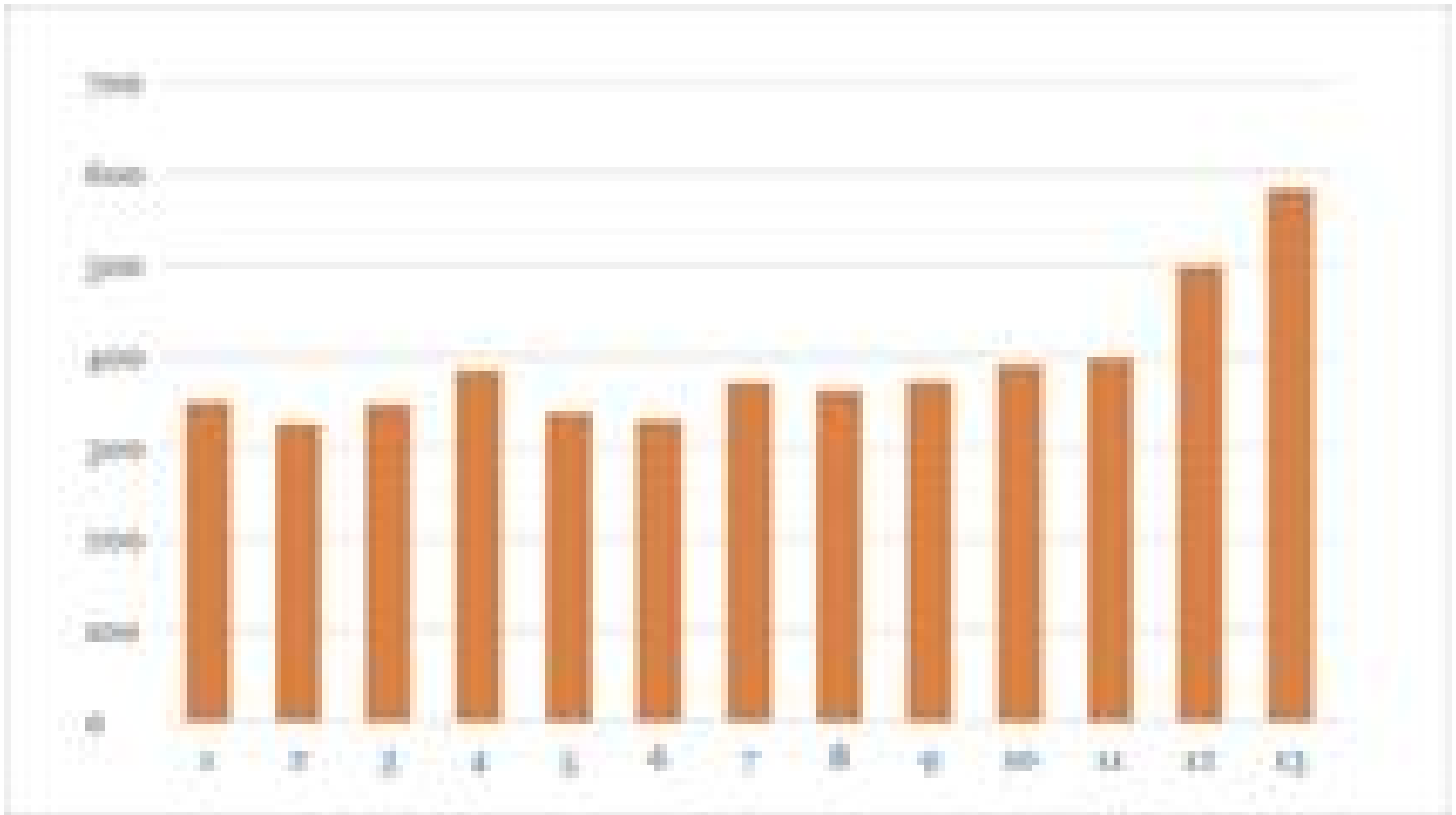
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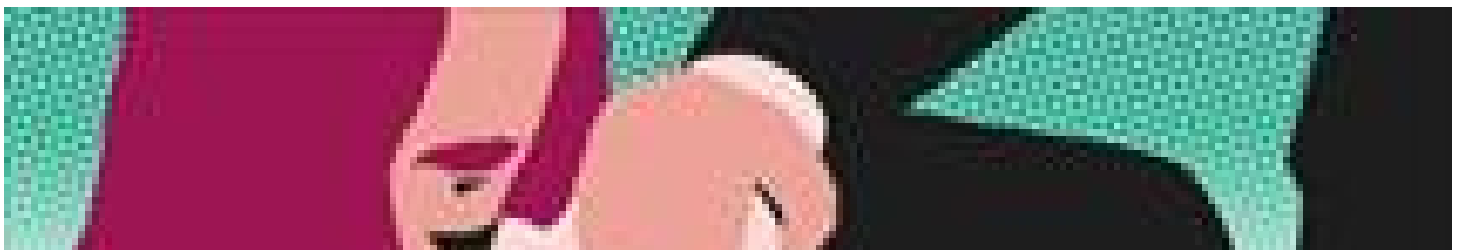


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