

Doing the right thing

The Public Interest Disclosure Act protects employees who speak out about fraud or misconduct. This is vital, says **Sally Ramage**, because whistleblowing can be an obligation

The Public Interest Disclosure Act 1998 protects individuals who make certain disclosures of information in the public interest from victimisation.

It protects workers who are employees and also people who work or worked for someone to whom they were "introduced or supplied to do that work by a third person" or someone who is engaged to work for a term that is "in practice substantially determined not by him but by the person for whom he works or worked, by the third person or by both of them...".

So, to take AAT members as an example, this not only applies to in-house accounting technicians in business, but also to those employed in practice and to those who are self employed.

There is compensation to be claimed if one is dismissed for whistleblowing. If an accounting technician finds that a criminal offence has been committed in their workplace or that someone has failed to comply with a legal obligation and reports it, this is a protected disclosure against which they have protection from dismissal.

A disclosure qualifies for protection as long as "the worker makes the disclosure in good faith... believes that the information disclosed and any allegations contained in it are substantially true, and he does not make the disclosure for purposes of personal gain", according to the Public Interest Disclosure Act. Under the Act, allegations may be raised using a variety of procedures, either to the employer, to a prescribed person, to a legal adviser or to a Minister of the Crown.

This is important because whistleblowing is sometimes a matter of obligation, not choice. One example is found in the Pensions Act 1995, section 48. This states that if the auditor or actuary of an occupational pension scheme believes that "any duty relevant to the administration of the scheme imposed by any enactment or rule of law... has not been or is not being complied with" and "the failure to comply is likely to be of material significance in the exercise by the Authority of any of their functions", they must immediately give a written report of the matter to the Occupational Pensions Regulatory Authority (OPRA).

So, if you were working as an auditor and did a sample check for deductions from members' pay for pension contributions, and you found that those contributions were not made within the statutory time limit, you would have a duty to whistleblow – the matter must be reported to OPRA. Audit firms should have procedures in place for those who discover such matters.

There was a case in the courts in 2002, *RBG Resources plc v Rastogi and others*, in which it was decided that a senior employee owes a duty to blow the whistle on a major fraud that is perpetrated upon a company by its directors. This duty overrides his obligation of confidence. In the case, a senior employee, the Financial Controller, was sued by the company for breach of duty. The case came about as a result of 400 million us dollars having been siphoned off by the directors.

Auditors, too, have a duty to blow the whistle. In the 1999 case of *SASEA Finance Ltd v KPMG*, the decision was that auditors should blow the whistle immediately on fraud discovered during an audit, not wait until they have signed off the accounts. SASEA Finance Ltd was a part of a group of companies that collapsed in 1992 after a huge fraud was carried out by one of its directors. KPMG was retained to prepare its 1989 accounts, which it did, signing them off that November. The obvious reason why KPMG should have disclosed the fraud immediately is that the client might have been spared further losses.

So note your obligations, but make sure you are certain of your facts before you say anything. The downside to whistleblowing is that you as an employee could end up being sued for defamation. Defamation cases are extremely expensive to defend and there is no legal aid for this. If a case against you were successful, there would be damages to be paid plus the cost of your own and the other side's expenses. Defamation is not covered by your professional indemnity insurance, so that is not a source of aid in a case such as this. Beware.

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