

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

(2) For the purposes of subsection (1)(e) whether steps which employee took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time."

124. Section 48(2) ERA provides that in relation to a complaint including a complaint that the worker had been subjected to a detriment in contravention of section 47B and a complaint of a breach of section 44 ERA:

"On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done."

125. In *Babula v Waltham Forest College [2007] ICR 1026*, the Court of Appeal held that an employee who informed the police and other enforcement agencies that he believed that an act of racial hatred had been committed could rely on the protection of the whistleblowing provisions to argue that his dismissal was automatically unfair, even though his belief was mistaken. The Court held that a belief may be reasonably held and yet be wrong.

126. The protected disclosure has to be causative in the sense of being "the real reason, the core reason, the causa causans, the motive for the treatment complained of": *Aspinall v MSI Mech Forge Ltd EAT 891/01*.

127. In *Fecitt v NHS Manchester [2012] IRLR 64*, Lord Justice Elias wrote, at paragraph 45:

"In my judgment, the better view is that s.47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower."

128. We agree that, as expressed by Mr Crosfill, if the tribunal has found that the claimant made protected disclosures and been subjected to detriment, in order to escape liability, it is necessary for the respondent to show the fact that disclosures were made had no material influence on its decisions.

129. It is possible for a tribunal to find that a worker was not subjected to a detriment because he made a disclosure but because of some form of misconduct that was committed in the course of making the disclosure. In such a case, the complaint will not succeed e.g. *Bolton School v Evans [2007] ICR 641, CA*.