Understanding Legislation

You are not expected to be a lawyer, but you should be able to demonstrate an awareness of the laws which impact on the workplace. The stage test, and open book examination will give you opportunities to demonstrate your knowledge and understanding of legal and ethical issues typically encountered in the workplace by graduates with technical degrees in the area of computing and IT.

Much of the legislation concerning the workplace and employment is generic. Other areas, for instance, laws concerning issues such as security, copyright, privacy, data protection and environmental issues may be more specialised. This handout is concerned primarily with the workplace and employment legislation.

Employment Laws

Employment legislation is complex; you may be well advised to seek professional advice in areas of detail of the law. Employment law, and associated legislation might affect you in the future either as an employee, or as an employer. Government provides advice for small businesses through its business link services - http://businesslink.co.uk/. Some businesses are also members of professional associations which may themselves offer advice and legal services as part of their membership fee.

For the employee, there are also government offices (e.g. customs and Revenue) information services (e.g. ACAS) and voluntary services (e.g. Citizens advice) which may offer support. Web site information is channelled through http://www.direct.gov.co.uk/

Our major UK professional body is the British Computer Society http://www.bcs.org.uk, and there are also trades unions whose remit covers workers in technical and professional jobs. Details of the areas of employment covered by UK trades unions can be found via the TUC website http://www.tuc.org.uk/

The department for business, innovations and skills is currently responsible for policy and legislation on trade unions including:

- trade union recognition and collective bargaining
- industrial action
- Statutory Redundancy Pay
- guarantee payments
- providing information and advice on trade unions and their policies
Legislation Associated with Employment

Race relations
Legislation was passed in 1965, and 1968. The bulk of today's legislation is based around the 1976 Race relations act, and subsequent amendments. You are not expected to know the detail of the law, but would be expected to be aware of the basic extent of the legislation.

The Race Relations Act 1976 forms the legal foundation of protection from racial discrimination in the fields of employment, education, training, housing and the provision of goods, facilities and services.

Under this law, 'racial discrimination' means treating a person less favourably than others on racial grounds, meaning race, colour, nationality or ethnic or national origins.

This law protects you against people's actions, not their opinions or beliefs.

This means someone is breaking the law if they refuse to employ you because you're wearing a turban. But being privately prejudiced towards a particular racial group does not constitute breaking the law.
Disabilities Discrimination Act

Disabled workers share the same general employment rights as other workers, but there are also some special provisions for them under the Disability Discrimination Act (DDA). One important aspect of this is the right to reasonable adjustments in the workplace.

Under the DDA, it is unlawful for employers to discriminate against disabled people for a reason related to their disability, in all aspects of employment, unless this can be justified. The Act covers things like:

- application forms
- interview arrangements
- proficiency tests
- job offers
- terms of employment
- promotion, transfer or training opportunities
- work-related benefits such as access to recreation or refreshment facilities
- dismissal or redundancy

Reasonable adjustments in the workplace

Under the DDA, your employer has a duty to make 'reasonable adjustments' to make sure you're not put at a substantial disadvantage by employment arrangements or any physical feature of the workplace.

Examples of the sort of adjustments your employer should consider, in consultation with you, include:

- allocating some of your work to someone else
- transferring you to another post or another place of work
- making adjustments to the buildings where you work
- being flexible about your hours - allowing you to have different core working hours and to be away from the office for assessment, treatment or rehabilitation
- providing training or retraining if you cannot do your current job any longer
- providing modified equipment
- making instructions and manuals more accessible
- providing a reader or interpreter

Things to consider at work

You can play an active role in discussing these arrangements with your employer. You might also want to encourage your employer to speak to someone with expertise in providing work-related help for disabled people, such as an occupational health adviser.

Issues for you both to consider include:

- how effective will an adjustment be?
- will it mean that your disability is slightly less of a disadvantage or will it significantly reduce the disadvantage?
- is it practical?
- will it cause much disruption?
- will it help other people in the workplace?
- is it affordable?

You may want to make sure that your employer is aware of the Access to Work programme run by Jobcentre Plus. Through this programme, employers can get advice on appropriate adjustments and possibly some financial help towards the cost of the adjustments.

Redundancy

Your employer cannot select you for redundancy because you are disabled or for any reason relating to your disability. If your employer is consulting about any future redundancies, they should take reasonable steps to make sure you are included in the consultations.

Your employer must also make reasonable adjustments to any selection criteria they create for selecting employees for redundancies, to make sure the criteria do not discriminate against disabled employees. For example, a reasonable adjustment for your employer to make could
be discounting disability-related sickness absence when using attendance as part of their redundancy selection scheme.

**Equality and Human Rights Commission**
The Equality and Human Rights Commission is a good source of advice if you feel you may have been discriminated against at work or elsewhere. It can also help if you think you have been discriminated against and want to lodge a claim at an Employment Tribunal.
Sex discrimination and equal pay

Discrimination can be direct, indirect, deliberate or accidental. If you feel you are being discriminated against at work because of your sex, marital status or gender, it is unlawful and your employer should stop the discrimination.

Sex discrimination

Under the 1975 Sex Discrimination Act it's unlawful for an employer to discriminate against you because:

- of your gender
- you are married
- you have had, are having or intend to have, gender reassignment, this means someone, supervised by a doctor, who changes their gender

Sex discrimination laws cover almost all workers (men and women) and all types of organisations in the UK. It covers:

- recruitment
- employment terms and conditions
- pay and benefits
- status
- training
- promotion and transfer opportunities
- redundancy
- dismissal

Equal pay

The 1970 Equal Pay Act makes it unlawful for employers to discriminate between men and women in terms of their pay and conditions where they are doing either:

- the same or similar work
- work rated as equivalent in a job evaluation study by the employer
- work of equal value

Genuine occupational qualifications

In some cases, a job can be offered to someone of a particular sex, because of what is called a 'genuine occupational qualification'. Examples could include:

- some jobs in single-sex schools
- jobs in some welfare services
- acting jobs that need a man or a woman

Positive action

In some circumstances, an employer may encourage or offer support specifically to men or women, and this 'positive action' is allowed under sex discrimination laws.

For example, an employer who has no women managers might offer some training in management skills only to women or encourage them to apply for management jobs.

Positive action applies only to training and encouragement to apply for jobs, so when it comes to choosing who is to get a job the employer must consider all candidates on their suitability alone.

Discrimination in the workplace

Discrimination means treating some people differently from others. It isn't always unlawful - after all, people are paid different wages depending on their status and skills. However, there are certain reasons that your employer can't discriminate against you for.

What is discrimination?

Equal opportunities laws aim to create a 'level playing field' so that people are employed, paid, trained and promoted only because of their skills, abilities and how they do their job.
Discrimination happens when an employer treats one employee less favourably than others. It could mean a female employee being paid less than a male colleague for doing the same job, or a minority ethnic employee being refused the training opportunities offered to white colleagues.

You can’t be discriminated against because of your:

- gender
- marital status
- gender reassignment
- pregnancy
- sexual orientation
- disability
- race
- colour
- ethnic background
- nationality
- religion or belief
- age

Your employer also can’t dismiss you or treat you less favourably than other workers because you:

- work part time
- are on a fixed-term contract
- Part-time work
Types of discrimination

Direct discrimination
Direct discrimination happens when an employer treats an employee less favourably than someone else because of one of the above reasons. For example, it would be direct discrimination if a driving job was only open to male applicants.

There are limited circumstances in which an employer might be able to make a case for a genuine occupational requirement for the job. For example, a Roman Catholic school may be able to restrict applications for a scripture teacher to baptised Catholics only.

Indirect discrimination
Indirect discrimination is when a working condition or rule disadvantages one group of people more than another. For example, saying that applicants for a job must be clean shaven puts members of some religious groups at a disadvantage.

Indirect discrimination is unlawful, whether or not it is done on purpose. It is only allowed if it is necessary for the way the business works, and there is no other way of achieving it. For example, the condition that applicants must be clean shaven might be justified if the job involved handling food and it could be shown that having a beard or moustache was a genuine hygiene risk.

Harassment
You have the right not to be harassed or made fun of at work in a work-related setting (eg a social event). Harassment means offensive or intimidating behaviour - sexist language or racial abuse, which aims to humiliate, undermine or injure its target. For example, allowing displays or distribution of sexually explicit material or giving someone a potentially offensive nickname.

Victimisation
Victimisation means treating somebody less favourably than others because they tried to make, or made, a complaint about discrimination. For example, it could be preventing you from going on training courses, taking unfair disciplinary action against you, or excluding you from company social events.

Being treated unfairly for other reasons
If you are treated unfairly but it is not for one of the reasons listed above, it may be that you are being bullied. Bullying should never be acceptable in the workplace, find out what you might be able to do about it.

Asking for your employment rights
If you are asking for your statutory employment rights and your employer treats you unfairly for this, you may be able to take legal action. Your statutory employment rights include:

- the right to a written statement of employment particulars
- the right to be paid the National Minimum Wage
- protection from unlawful deductions from wages
- the right to paid holiday
- limits on your working hours
- the right to join a trade union

You shouldn't have to put up with bullying at work.
Bullying at work

Bullying at work is when someone tries to intimidate another worker, often in front of colleagues. It is usually, though not always, done to someone in a less senior position. It is similar to harassment, which is where someone's behaviour is offensive. For example, making sexual comments, or abusing someone's race, religion or sexual orientation.

You cannot make a legal claim directly about bullying, but complaints can be made under laws covering discrimination and harassment. If you are forced to resign due to bullying you can make a constructive dismissal claim.

Examples of bullying behaviour

Bullying includes abuse, physical or verbal violence, humiliation and undermining someone's confidence. You are probably being bullied if, for example, you are:

- constantly picked on
- humiliated in front of colleagues
- regularly unfairly treated
- physically or verbally abused
- blamed for problems caused by others
- always given too much to do, so that you regularly fail in your work
- regularly threatened with the sack
- unfairly passed over for promotion or denied training opportunities

Bullying can be face-to-face, in writing, over the phone or by fax or email.

Before taking action

If you think you are being bullied, it is best to talk it over with someone. Sometimes what seems like bullying might not be.

For example, you might have more work to do because of a change in the way your organisation is run. If you find it difficult to cope, talk to your manager or supervisor, who might be as concerned as you are. Sometimes all it takes is a change in the way you work to give you time to adjust.

What to do if you are bullied at work

Employers have a 'duty of care' to their employees and this includes dealing with bullying at work. There are measures you can take if you are being bullied.

Get advice

Speak to someone about how you might deal with the problem informally. This might be:
- an employee representative like a trade union official
- someone in the firm's human resources department
- your manager or supervisor

Some employers have specially trained staff to help with bullying and harassment problems. They are sometimes called 'harassment advisers'. If the bullying is affecting your health, visit your GP.

Talk to the bully

The bullying may not be deliberate. If you can, talk to the person in question, who may not realise how their behaviour has been affecting you. Work out what to say beforehand. Describe what has been happening and why you object to it. Stay calm and be polite. If you don't want to talk to them yourself, ask someone else to do so for you.

- Keep a written record or diary
- Write down details of every incident and keep copies of any relevant documents.
Making a formal complaint
Making a formal complaint is the next step if you can't solve the problem informally. To do this you must follow your employer's grievance procedure.

Some awkward situations
Below are some examples of awkward situations you might face at work and suggestions on how they could be handled.

• The bully is your manager and the grievance procedure says that is who you should speak to

Make the complaint in writing to your line manager and ask that it is passed on to another manager to look into. If that doesn’t happen, or isn’t possible, make the complaint to your boss’s manager or human resources department.

• The person bullying you is a sole trader or the firm's managing director or owner

Follow the grievance procedure. It may help you later if you have to take legal action against your employer.

• Your boss is violent and abusive towards you and you are afraid to make a complaint

If you think that making a complaint will cause further bullying or harassment, you don’t need to follow normal grievance procedures. In cases like this, you can still then take legal action if you wish.

What about taking legal action?
Sometimes the problem continues even after you have followed your employer's grievance procedure. If nothing is done to put things right, you can think about legal action, which may mean going to an Employment Tribunal. Get professional advice before taking this step.

Remember that it is not possible to go to an Employment Tribunal directly over bullying. Complaints can be made under laws covering discrimination and harassment.

If you have left your job because of bullying, you might be able to claim unfair 'constructive' dismissal. This can be difficult to prove, so it is important to get advice from a specialist lawyer or other professional.
Working Time Directive

Working time limits (the 48-hour week)

You should not have to work more than 48 hours a week on average, unless you choose to, or work in a sector with its own special rules. Your normal working hours should be set out in your contract of employment or written statement of employment particulars.

What counts as work?
As well as carrying out your normal duties, your working week includes:

- job-related training
- job-related travelling time, for example, if you are a sales rep
- working lunches, for example business lunches
- time spent working abroad, if you work for a UK-based company
- paid and some unpaid overtime
- time spent 'on-call' at the workplace

Working two different jobs
If you work two jobs you could either:

- consider signing an opt-out agreement with your employers if your total time worked is over 48 hours or
- reduce your hours to meet the 48-hour limit

What does not count as work?
You can get further information from the Pay and Work Rights Helpline 0800 917 2368

- Your working week does not include:
  - breaks when no work is done, such as lunch breaks
  - normal travel to and from work
  - time when you are 'on call' away from the workplace
  - evening and day-release classes not related to work
  - travelling outside of normal working hours
  - unpaid overtime that you have volunteered for, so for example, staying late to finish something off
  - paid or unpaid holiday
  - Overtime
  - Rest breaks

Opting out of the 48 hour week
If you are 18 or over and wish to work more than 48 hours a week, you can choose to opt out of the 48 hour limit. This must be voluntary and in writing. It can't be an agreement with the whole workforce and you shouldn't be sacked or unfairly treated (for example refused promotion or overtime) for refusing to sign an opt-out.

If you sign an opt-out, you have the right to cancel this agreement at any time by giving between one week and three months' notice. You can agree this notice period with your employer when you sign the opt-out. If no notice period is agreed then you only need to give one week's notice of cancellation. You can cancel an opt-out even if it's part of a contract you have signed.

Example of opt-out agreement
I (name) agree that I may work for more than an average of 48 hours a week. If I change my mind, I will give my employer (amount of time - up to three months) notice in writing to end this agreement.

Signed........................................
Dated........................................

Young workers
If you are under 18 and over school leaving age you are classed as a young worker. You are under school leaving age until the end of the summer term of the school year in which you turn 16. Young workers have different working time limits than adult workers.
Who is not covered by the working time limits?
Your working week is not covered by the working time limits if you work in the following areas:

- jobs where you can choose freely how long you will work (eg a managing executive)
- the armed forces, emergency services and police are excluded in some circumstances
- domestic servants in private houses
- sea transport workers
- mobile workers in inland waterways and lake transport
- workers on board sea going fishing vessels

Trainee doctors
Doctors in training are subject to the following weekly working time limits:

- 56 hours from 1 August 2007 to 31 July 2009
- 48 hours from 1 August 2009
**Constructive Dismissal**

In employment law, constructive dismissal, also called constructive discharge, occurs when employees resign because their employer's behaviour has become so heinous or made life so difficult that they may consider themselves to have been fired. The employee must prove that the behaviour was unlawful — that the employer’s actions amounted to a fundamental breach of contract, also known as a repudiatory breach of contract.

**A Case for constructive dismissal**

Examples of actions potentially justifying resignation (and thus eligible for claims of constructive dismissal)

- Failing to pay wages due.
- Putting managers into excessively difficult work situations without supporting their decisions.
- Harassment or humiliation, particularly in front of less senior staff.
-Victimisation of the staff member.
- Unilaterally changing the employee’s job content or terms of employment.
- Significantly changing the employee’s job location at short notice.
- Falsely accusing an employee of misconduct or of not being capable of carrying out their job.
- Undue demotion or disciplinary procedures.
- Sabotage of employee's work product either directly or indirectly with repeated interruption, confusing or inaccurate direction, or an un-communicated deadline changes.
- Vandalizing the employee's workspace, home or other personal property. Such tactics could range from minor destruction of immaterial items to more severe acts of vandalism.
- Forced attendance of a social event against the employees’ wishes.
Employment Tribunals: an introduction
An Employment Tribunal deals with legal disputes to do with work. Before applying to an Employment Tribunal see if you can resolve your problem another way and check if you are entitled to make an Employment Tribunal claim.

Employment Tribunals
Employment Tribunals hear cases involving employment disputes. They are less formal than a court. However, you give evidence under an oath or affirmation, and if you lie you can be convicted of perjury.

Cases are usually heard by a panel of three people, called a 'Tribunal'. It is made up of a legally qualified Employment Judge, and two 'lay members' that represent the employee and employer sectors. The lay members use their experience to bring balance to proceedings.

Sometimes the Employment Judge will sit alone. For example, to hear any legal arguments or to deal with financial claims caused by the termination of your employment.

There is no charge for making a claim at an Employment Tribunal. So unless you are paying a representative (for example, a solicitor) there is no cost in making a claim.

If you live in Northern Ireland there are some differences in the law.

Before making a claim to an Employment Tribunal
It is often better to try to sort out problems informally with your employer before going to an Employment Tribunal.

In most cases you should try to resolve the problem through your employer’s grievance or disciplinary process before you make a claim. You could also try the help of a third party (mediator or conciliator).

Before you make an Employment Tribunal claim, you should consider seeking specialist advice, particularly about your chance of success.

If your dispute is likely to turn into an Employment Tribunal case, Acas (the Advisory, Conciliation and Arbitration Service) may be able to offer you a free conciliation service. This is available before you make a claim to the Employment Tribunal. You can contact the Acas helpline to find out if this is suitable for you.

How to resolve a problem at work
If you have a problem at work find out about the different ways, both informal and formal, that you could try to help sort things out. Before taking action you should try to work out what the problem is and make sure it isn’t a simple mistake or misunderstanding.

Try to sort it out informally first
Problems with your employer will probably come under one of two categories, grievances or disciplinaries

Grievances
These are concerns, problems or complaints that you raise with your employer. For example, concerns you have about:

• your job
• your employment terms and conditions
• your contractual or statutory rights
• the way you are being treated at work

If you believe there is a real problem, explain your concern to your immediate manager to see if you can sort it out informally. You may find it helpful to suggest what you would like them to do to resolve your problem.

Disciplinaries
Your employer might have concerns about your conduct, your absence from work or the way you are doing your job.

If they raise these concerns informally with you, it is generally best to try to agree a solution then. Otherwise these issues could lead to disciplinary action, including dismissal in more serious cases.
Where to get help

Acas (Advisory, Conciliation and Arbitration Service)

Acas has a range of services which can help individuals or groups of employees to avoid or resolve problems and disputes in the workplace. The Acas helpline offers free, confidential and impartial guidance on employment rights and workplace issues. They provide general information on employment rights and responsibilities and can also help employees and employers who are involved in an employment dispute to identify practical ways of sorting out the problem.

If an employer and an employee need external help to resolve a problem, Acas can often assist them to find a solution that is acceptable to both.

Acas offers free, confidential and impartial advice on all employment rights issues.

If you are a trade union member, you can contact your trade union representative for advice and support on employment issues.

Your local Citizens Advice Bureau (CAB) can provide free and impartial advice.

Employment Tribunal claims

You may want to consider making an Employment Tribunal claim if:

1. You have tried informal and formal options for sorting out your problem at work
2. You still feel your concerns have not been addressed

Most people find making a legal claim a challenging process. It is important to understand the key aspects of the law and procedures that will apply in your Employment Tribunal case. You probably want to seek advice at this stage, if you have not done so already.

Before making a claim to an Employment Tribunal, you must:

• check that your claim is something an Employment Tribunal can consider
• make sure you are within the statutory time limits for bringing a claim

It is advisable that you follow your employer's grievance and disciplinary procedures before making an Employment Tribunal claim.

Claims that can be heard by an Employment Tribunal

An Employment Tribunal can only decide cases relating to specific rights, so it is important you know what you are claiming. For example, if you are complaining about not being paid, it is called 'unlawful deductions from wages'. If your employer treats you less favourably because you are disabled, it is 'disability discrimination'.

Time limits

In most cases, you must make an Employment Tribunal application within three months of the date when the matter you are complaining about happened. This time limit can vary depending on what your claim is about.

Employment Tribunals will not usually accept claims received after the relevant time limit. Though in very exceptional circumstances they may agree to extend it. You can check the time limit for your case by calling the Employment Tribunal helpline on 08457 959 775.

Following grievance and disciplinary principles

An Employment Tribunal will look at whether you and your employer have followed the principles in the Acas Code of Practice on disciplinary and grievance procedures (the Code). The Code sets out the principles you and your employer should follow to achieve a reasonable standard of behaviour in handling grievance and disciplinary cases.

An Employment Tribunal will consider whether a failure to follow the principles in the Code was unreasonable. It can choose to adjust awards by up to 25 per cent if it considers that you or your employer acted unreasonably.

Further guidance can be found in 'Discipline and grievances at work: the Acas guide'. This guidance does not form part of the Code. It has been prepared by Acas to help you and your employer understand the Code and how to reflect it in procedures and behaviour.
Whistleblowing
The following information came from Roydens - ttp://www.roydens.co.uk/)
The Public Interest Disclosure Act 1998 protects workers who ‘blow the whistle' about wrongdoing. It makes provision about the kinds of disclosures which may be protected; the circumstances in which such disclosures are protected; and the persons who may be protected.

Persons who may be protected by the new provisions against unfair dismissal or being subjected to detriment
The provisions introduced by the Public Interest Disclosure Act 1998 protect most workers from being subjected to a detriment by their employer. Detriment may take a number of forms, such as denial of promotion, facilities or training opportunities which the employer would otherwise have offered. Employees who are protected by the provisions may make a claim for unfair dismissal if they are dismissed for making a protected disclosure. Workers who are not employees may not claim unfair dismissal; however, if their contract has been terminated by the employer because they made a protected disclosure, they may instead make a complaint that they have been subjected to a detriment.

Subject to some limited exceptions, the new provisions protect persons who work under contracts of employment; those who work personally for someone else (under a "worker’s" contract) but are not genuinely self-employed; homeworkers; certain agency workers; National Heath Service practitioners such as GPs, certain dentists, pharmacists and opticians; and certain categories of trainees.

Qualifying Disclosures
Certain kinds of disclosures qualify for protection ("qualifying disclosures"). Qualifying disclosures are disclosures of information which the worker reasonably believes tend to show one or more of the following matters is either happening now, took place in the past, or is likely to happen in the future:

- a criminal offence;
- the breach of a legal obligation;
- a miscarriage of justice;
- a danger to the health or safety of any individual;
- damage to the environment; or
- deliberate covering up of information tending to show any of the above five matters.

It should be noted that in making a disclosure the worker must have reasonable belief that the information disclosed tends to show one or more of the offences or breaches listed above (‘a relevant failure’). The belief need not be correct - it might be discovered subsequently that the worker was in fact wrong - but the worker must show that he held the belief, and that it was a reasonable belief in the circumstances at the time of disclosure.

Protection under the provisions applies even if the qualifying disclosure concerns a relevant failure which took place overseas, or where the law applying to the relevant failure was not that of the United Kingdom.

Protected Disclosure
Circumstances in which disclosures are protected (a "protected disclosure")

Making a qualifying disclosure to the employer or via internal procedures
A qualifying disclosure will be a protected disclosure where it is made:

(a) to the worker's employer, either directly to the employer or by procedures authorised by the employer for that purpose; or
(b) to another person whom the worker reasonably believes to be solely or mainly responsible for the relevant failure.

The only additional requirement on the worker is that he should act in good faith. No other requirement is necessary to qualify for protection.
Making a qualifying disclosure to a “prescribed person”
Workers who are concerned about wrongdoing or failures can make disclosures to a person or body which has been prescribed by the Secretary of State for the purpose of receiving disclosures about the matters concerned. If a worker makes a qualifying disclosure to such persons, it will be a protected disclosure provided the worker:

- makes the disclosure in good faith;
- reasonably believes that the information, and any allegation it contains, are substantially true; and
- reasonably believes that the matter falls within the description of matters for which the person or body has been prescribed. (For example, breaches of health and safety regulations can be brought to the attention of the Health and Safety Executive or appropriate local authority, or environmental dangers can be notified to the Environment Agency.)

Making a qualifying disclosure to a legal adviser
A qualifying disclosure will be a protected disclosure if it is made to a legal adviser in the course of obtaining legal advice. There are no further conditions attached.

Making a qualifying disclosure to a Minister
A qualifying disclosure made in good faith by a worker, employed in a Government-appointed organisation, such as a non-departmental public body, will be a protected disclosure if made to a Government Minister (either directly or via departmental officials).

Making a qualifying disclosure about an exceptionally serious failure
A qualifying disclosure made about a relevant failure which is exceptionally serious will be a protected disclosure if the worker:

- makes the disclosure in good faith;
- reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and
- does not act for personal gain.

Also, it must be reasonable for the worker to make the disclosure in view of all the circumstances, having regard in particular to the identity of the person to whom the disclosure is made. Note that the relevant failure must be exceptionally serious. This will be a matter of fact, and not simply a matter of the worker reasonably believing it to be exceptionally serious.

Making a qualifying disclosure more generally
A qualifying disclosure will be a protected disclosure if the following conditions are met:

Firstly, the worker must:

- make the disclosure in good faith
- reasonably believe that the information, and any allegation contained in it, are substantially true, and
- not act for personal gain.

In addition, one or more of the following conditions must be met:

the worker reasonably believed that he would be subjected to a detriment by his employer if disclosure were to be made to the employer or to a prescribed person;

- in the absence of an appropriate prescribed person, the worker reasonably believed that disclosure to the employer would result in the destruction or concealment of information about the wrongdoing;
- the worker had previously disclosed substantially the same information to his employer or to a prescribed person.

Finally, it must be reasonable for the worker to make the disclosure. The employment tribunal will decide whether the worker acted reasonably, in all the circumstances, but in particular will take into account:

the identity of the person to whom the disclosure was made (eg, it may be more likely to be considered reasonable to disclose to a professional body that has responsibility for standards and conduct in a particular field, such as accountancy or medicine, than to the media);
• the seriousness of the relevant failure;
• whether the relevant failure is continuing or is likely to occur again;
• whether the disclosure breaches the employer's duty of confidentiality to others (eg, information that is made available by the worker may contain confidential details about a client);
• what action has or might reasonably be expected to have been taken if a disclosure was made previously to the employer or a prescribed person; and
• whether the worker complied with any internal procedures approved by the employer if a disclosure was made previously to the employer.

**Employment Tribunals and Remedies**

Workers protected by the provisions (including employees) can complain that they have been subjected to detriment by their employer for making a protected disclosure. As noted earlier, an 'employee' can make a claim of unfair dismissal; a 'worker' who is not an employee and whose contract has been terminated by his employer because he made a protected disclosure can claim that he has been subjected to a detriment.

As with many other claims to employment tribunals, the complaint should normally be made within three months of the dismissal or detriment. However, from 1 October 2004, with the introduction of statutory dismissal, disciplinary and grievance procedures, the time limit will be extended, for claims made by employees, in specified circumstances connected with those procedures. The tribunal can also consider a complaint made outside the three-month time limit (either by an employee or by a 'worker') if they believe it was not reasonably practicable for the employee to have made the complaint within it and that it has been made within such further period as they consider reasonable.

Where a tribunal finds that a complaint of unfair dismissal is justified, it will order re-instatement or re-employment, or the payment of compensation. Where a worker complains that he has been subjected to a detriment and the tribunal finds the complaint well-founded, it will make a declaration to that effect and may order the payment of compensation.