

# Workplace Investigations

## Contributing Editors

*Phil Linnard at Slaughter and May*  
*Clare Fletcher at Slaughter and May*

## 09. What additional considerations apply when the investigation involves whistleblowing?

### Austria

Author: *Michaela Gerlach, Sonia Ben Brahim*  
at GERLACH

The provisions of the Whistleblowing Directive must be respected. In Austria, these have been implemented through the Whistleblower Protection Act (HSchG). If the whistleblower or the persons concerned fall within the scope of the Directive, their identity must be protected. Only authorised persons may access the report. Retaliatory measures are invalid or must be reversed. Within a maximum of seven days, the whistleblower must receive a confirmation of his or her complaint. Feedback to the whistleblower must then be provided within a maximum of three months.

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### Switzerland

Author: *Laura Widmer, Sandra Schaffner*  
at Bär & Karrer

If an employee complains to his or her superiors about grievances or misconduct in the workplace and is subsequently dismissed, this may constitute an unlawful termination (article 336, Swiss Code of Obligations). However, the prerequisite for this is that the employee behaves in good faith, which is not the case if he or she is (partly) responsible for the grievance.

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### United Kingdom

Author: *Phil Linnard, Clare Fletcher*  
at Slaughter and May

The employer should first identify which individuals may have protection as whistleblowers. This could be a

current or former employee who raises the initial complaint, a co-worker who gives evidence as part of the investigation, or the accused employee.

In each case, consider whether a “protected disclosure” has been made (under Part IVA ERA 1996). This requires analysis of the subject matter of the disclosure, how it is made, and a reasonable belief that it is made in the public interest.

Employers must then ensure there is no detrimental treatment or dismissal of any worker on the grounds of their protected disclosure. Although the causation test for these purposes is not straightforward, as a general rule if the protected disclosure has a “material influence” on the decision to discipline or dismiss, there may be liability. Individual managers may be personally liable alongside the employer. Compensation for whistleblowing cases is uncapped, meaning businesses and individuals can face significant financial and reputational exposure.

What this means in practical terms is that the employer should promote a “speak-up” culture and, where protected disclosures are made, ensure they are handled by a team who are properly trained in how to do so.

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## Contributors



### Austria

Michaela Gerlach  
Sonia Ben Brahim  
*GERLACH*



### Switzerland

Laura Widmer  
Sandra Schaffner  
*Bär & Karrer*



### United Kingdom

Phil Linnard  
Clare Fletcher  
*Slaughter and May*