

Client Alert

Corporate Practice Group

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Why Status Matters

The UK Court of Appeal recently decided that a law firm partner was not a “worker” of the firm. The partner could not, therefore, bring a whistleblowing claim against the firm after she was dismissed from the partnership following her disclosure that an associated law firm had engaged in bribery and money laundering. In the UK, employees and other “workers” benefit from protections against being subjected to a detriment if they make protected whistleblowing disclosures. The Court of Appeal decided that the partner was a genuine partner of the firm and, as such, was not a worker with consequential protections for blowing the whistle on the alleged misconduct.

Background

Ms. Krista Bates van Winkelhof was a member of Clyde & Co LLP. She was held out to be a “partner”, as is common in law firms, even though the firm was a limited liability partnership (where individuals are members) rather than a general partnership (where individuals are partners). She was seconded to a Tanzanian joint venture partner of Clyde & Co LLP, Ako Law, at the relevant time of her claims. She was also employed locally by Ako Law as required under Tanzanian law. Ms. Bates van Winkelhof had the title of equity partner and was entitled to receive profit-related income and guaranteed income from the firm.

Ms. Bates van Winkelhof reported to Clyde & Co LLP that the managing director of Ako Law had told her that he paid bribes to obtain work and had engaged in money laundering. She was dismissed by Ako Law the next day and subsequently dismissed by Clyde & Co LLP two months later. She also brought a sex discrimination case against Clyde & Co LLP which will be heard in due course.

Legal context

In the UK, “workers” include employees and other individuals who personally perform services or work. All employees are workers. Not all workers are employees. Only employees have the benefit of employment protections, such as not to be unfairly dismissed and to redundancy payments. Workers have the benefit of certain protections which are not confined to employees, such as being protected from suffering a detriment if they make a protected whistleblowing disclosure and to minimum holiday and rest breaks. Examples of protected whistleblowing disclosures include reports that a breach of contract has or will take place or that an illegal act has or will occur by the firm or by someone on behalf of the firm. Examples of detriments include dismissal

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or suffering other adverse consequences such as being demoted or not promoted, not receiving a bonus or pay rise or receiving a low bonus or pay rise. The statutory definition of a worker incorporates the concept that one party has to be subordinate to the other. The court, therefore, considered the relationship between Ms. Bates van Winkelhof and Clyde & Co LLP.

Status

The Court of Appeal considered the reality of the relationship between Ms. Bates van Winkelhof and the firm and also looked at whether Ms. Bates van Winkelhof would have been a partner if the firm were structured as a general partnership, rather than a limited liability partnership.

Ms. Bates van Winkelhof entered into a members' agreement with Clyde & Co LLP, setting out her obligations and entitlements. She had significant rights of participation in running the business. Even though Ms. Bates van Winkelhof was not a full equity partner, as she received a fixed income as well as a share in the firm's profits, it was decided that she was not in a subordinate relationship with the firm as she had a role in running the firm and participated in some of the firm's profits.

The Court of Appeal decided that she would have been a partner of Clyde & Co if the firm had been a general partnership instead of a limited liability partnership as she was "*plainly pursuing a business for profit in common with others*".

Comment

Previous cases have tested whether partners can be employees of their law firms. This is the first Court of Appeal decision on whether a partner can be a worker of the firm. The case confirms that members of LLPs and partners of general partnerships who are equity partners or who have management duties:

- do not have protections against being treated adversely for making protected disclosures regarding breaches of legal obligations, illegality, health and safety violations or environmental damage;
- are not protected under the Working Time Regulations, in relation to minimum rest breaks and holiday or maximum working hours; and
- are not entitled to be automatically enrolled into a pension scheme and have contributions made by the firm in respect of them.

The case did not address other types of partners who are commonly engaged by firms, such as those on pure fixed-income arrangements with no voting rights or management duties. Firms should consider whether these types of partners may be considered "workers", with consequential statutory protections, and if these protections are intended or if a review of the different types of partners within the firm is necessary. Partners are entitled to discrimination protections, regardless of their status as an employee or other worker. Ms. Bates van Winkelhof's discrimination claims are, therefore, allowed to proceed separately against Clyde & Co LLP.

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