

# Compliance & Risk

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## Headlines

- Stronger UK Pensions Regulator means increased risks for directors, p.16
- Five key markets affected by Citizens Advice super-complaint, p.18
- Tesco fined £16.4 million for bank cyber failings, p.19

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## Court rules on individual liability for whistleblowing dismissals

In a significant UK whistleblowing decision, *Timis and anor v Osipov*, the Court of Appeal has ruled that co-workers who dismiss an employee for making protected disclosures can be held personally liable. As a result, two directors were personally liable for the payment of an award totalling over £2m.

Since 2013, whistleblowers have had the right to bring a claim directly against their co-workers if subjected to a detriment other than dismissal itself, and this case considered whether the co-worker liability could extend to

the act of dismissal.

Mr Osipov, the Chief Executive Officer of International Petroleum Ltd (IPL) made various protected disclosures. Shortly after making the disclosures he was dismissed by Mr Sage, a non-executive director of IPL. Mr Sage had been instructed to do so by Mr Timis, IPL's largest individual shareholder and a non-executive director.

The tribunal found that the main reason for Mr Osipov's dismissal was that he had made protected disclosures, or 'blown the whistle'.

The Employment Tribunal ruled that Mr Osipov had been unfairly dismissed by IPL as the principal reason for dismissal was that he had made a protected disclosure; and Mr Sage and Mr Timis, in making the decision to dismiss Mr Osipov, had subjected Mr Osipov to a detriment on the ground that he had made protected disclosures, contrary to s.47B Employment Rights Act 1996.

Mr Sage and Mr Timis appealed, arguing that while co-workers may in theory be liable for

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## Employer vicariously liable for rogue employee in cyber claims class action

In the UK's first successful class action taken in respect of a breach of data protection laws, the Court of Appeal has held that an employer can be vicariously liable to multiple claimants for a mass data breach committed by a rogue employee.

The case of *Wm Morrisons Supermarket PLC v Various Claimants [2018] EWCA Civ 2339* involved a class action by over 5,000 Morrisons employ-

ees whose data had been disclosed in a breach committed by a rogue employee. The claimants submitted that Morrisons was either primarily liable or vicariously liable for the rogue employee's acts.

A senior internal IT auditor employed by Morrisons copied the payroll data pertaining to almost 100,000 employees onto his own USB drive. The data,

which included sensitive personal data were subsequently uploaded onto a file sharing site and three newspapers were informed that the personal data had been made available on the web.

Having been alerted to the data breach, Morrisons swiftly took steps to alert the police and have the website taken down. The employee was

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