

SPEAK UP SAFELY

Third edition, 2023

Transparency International Ireland's
Guide to Making a Protected
Disclosure and 'Whistleblowing'



TRANSPARENCY
INTERNATIONAL
IRELAND

Transparency International Ireland is an independent, non-profit and non-partisan organisation. Its vision is of an Ireland that is open and fair – and where entrusted power is used for the common good. Our mission is to empower people with the support they need to promote integrity and stop corruption in all its forms.

If you would like further guidance on blowing the whistle or dealing with an ethical dilemma at work, please contact our Speak Up Helpline on **1800 844 866** or **+353 1 554 3965**. You can also contact us online. Please see **www.speakup.ie** for further details.

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Speak Up Safely

Transparency International Ireland's Guide to Making a Protected Disclosure and 'Whistleblowing'

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What is the purpose of this guide?

Whistleblowing is acknowledged as one of the most effective ways of stopping wrongdoing. For example, many of the cases of corruption, fraud, and sexual abuse of children that we know about have been exposed by workers who reported these issues to their employers, regulators or the press. In fact, it is believed that more cases of fraud and corruption are exposed by whistleblowing than any other method – including audit or investigation. This is perhaps unsurprising, given that workers are probably most likely to witness wrongdoing within their organisations.

Most employers that are committed to stopping fraud and other wrongdoing will encourage their staff to speak up. They recognise the benefits of being made aware of anything that is going wrong within their organisation and will seek to fix it before it leads to serious harm.

Research suggests that most of those that report wrongdoing will not suffer as a consequence.¹ However, deciding to speak up, report a concern or 'blow the whistle' can be a life changing experience. Whistleblowers are sometimes accused of being disloyal to the people they work with or for. In large part, this is because some people believe that they have blown the whistle on their own side or 'let the team down'.

Many workers who have shared concerns about wrongdoing in the workplace have since lost their jobs or opportunities for promotion, have been isolated at work and have suffered personally for having made a report. Because of this, it is important that potential whistleblowers are aware of the serious risks they could face when speaking up and that they take steps to minimise those risks.

The aim or purpose of this short guide is to help anyone thinking of reporting to make an informed decision before sharing concerns about wrongdoing. The guide will also be useful for employers and others working with people who are reporting concerns.

What does this guide not cover?

This guide is aimed at situations where someone chooses to disclose information, rather than where they have a legal obligation to make a mandatory report. For example, there are criminal sanctions for failing to disclose certain information in relation to offences against children and vulnerable persons.² These types of mandatory reporting obligations fall outside the scope of this guide but feel free to call our Speak Up Helpline (see page 32 for details) if you would like further information on this topic.

This guide is for general information only. It is not legal advice and should not be relied upon as such. We strongly recommend that those seeking to 'blow the whistle' obtain legal advice before taking any action. You can contact the Speak Up Helpline for guidance and you may be referred to a solicitor for legal advice if appropriate. In addition, although every reasonable effort is made to present current and accurate information, Transparency International Ireland makes no guarantees of any kind. Any use or reliance on the information contained in this guide is solely at the user's risk. The guide is not intended to serve as the primary basis for decision-making by a worker.

Our approach

We are indebted to the thousands of people who have come to us with a view to exposing wrongdoing. Many of our clients come to us for support after they have reported concerns and are suffering as a result. Others have yet to make that decision and are simply looking for confidential advice before they report.

Either way, we want people to contact us as soon as possible, and preferably before they report a concern, so that they can make an informed decision aimed at:

1. Taking the necessary steps to protect themselves.
2. Understanding what to expect from their employers or other recipients of their disclosure.
3. Understanding their rights and obligations when raising concerns.
4. Identifying appropriate courses of action for them as individuals.

Our focus is to find out what help the client needs from us to have their concerns addressed. This 'client-focused' approach has shaped our services and the content of this guide.

What is whistleblowing?

The terms ‘whistleblowing’ or ‘whistleblower’ can mean different things to different people. There are many legitimate definitions of both terms, but they are generally used to describe the practice of drawing attention to wrongdoing. Although ‘whistleblower’ has sometimes carried negative connotations, it is now more usually equated with the notion of a ‘truth-teller’ or as someone who ‘speaks truth to power’.

The Protected Disclosures Act 2014 (the “Act” for short) protects workplace whistleblowing. The Act was amended in 2022 and this Guide takes account of changes made to the law. The term ‘whistleblower’ is not used in the legislation, which focuses on ‘workers’ and ‘reporting persons’ instead. The Act defines workers/reporting persons broadly to include trainees, volunteers, job applicants, and board members (see page 5). Like the law, this guide is focused on helping people who are workers/reporting persons. This guide uses the terms ‘worker’, ‘whistleblower’ and ‘reporting persons’ interchangeably.

You and/or your employer may decide not to use the term whistleblower or whistleblowing to describe the making of a protected disclosure. This will not affect your legal rights. Indeed, in many instances, it may be useful to avoid using the term as it can be interpreted as there being conclusive evidence that wrongdoing is taking place. It may be that you are simply raising concerns about internal procedures or alerting someone to the risk of wrongdoing. It will usually be left to the employer or outside investigators to establish whether there is sufficient proof to act on your concerns.

The term ‘whistleblower’ is not used in the legislation, which focuses on ‘workers’ instead. Like the new law, this guide is focused on helping people who are workers.

Am I covered by the law?

You should be aware that not all of the reports made by whistleblowers are protected by the law. Perhaps the best example is that of the US intelligence analyst and whistleblower, Edward Snowden, who reported concerns in the public interest but faced prosecution for having done so. This is because the type of reports that he made and the way he made them are not permitted by US law.

In Ireland, the Act provides protection for all workers across public, private and non-profit sectors who make 'protected disclosures'. A 'protected disclosure' is a particular type of report by a whistleblower. In summary, it is a disclosure:

- of 'relevant information'
- made by a 'worker/reporting person'
- in one of the ways set out in the Act.

Each of these definitions is explained in further detail below. It is important to note that you will only be covered by the Act if you make a protected disclosure, not some other kind of report.

1. Worker

A protected disclosure must be made by a worker or 'reporting person'.³ Broadly, this is an individual who is or was:

- an employee⁴
- a contractor
- an agency worker
- a work experience student (pursuant to a training course or programme) or trainee
- a shareholder
- a board member (including a non-executive board member)
- a management team member
- a member of the Permanent or Reserve Defence Force
- a volunteer
- a job applicant involved in a recruitment process, or someone involved in other pre-contractual processes.⁵

2. Relevant information

Relevant information is information which:

- comes to the attention of the worker/reporting person in a work-related context; and
- which the worker/reporting person reasonably believes tends to show 'relevant wrongdoing'.

Work-related context is defined as "current or past work activities in the public or private sector through which, irrespective of the nature of those activities, persons acquire information concerning a relevant wrongdoing and within which those persons could suffer penalisation if they reported such information".

Relevant wrongdoings for the purposes of the Act are:

- a. that an offence has been, is being or is likely to be committed;
- b. that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker/reporting person undertakes to do or perform personally any work or services;
- c. that a miscarriage of justice has occurred, is occurring or is likely to occur;
- d. that the health or safety of any individual has been, is being or is likely to be endangered;
- e. that the environment has been, is being or is likely to be damaged;
- f. that an unlawful or otherwise improper use of funds or resources of a public body,

- or of other public money, has occurred, is occurring or is likely to occur;
- g. that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement; or
- h. that a breach⁶ has occurred, is occurring or is likely to occur, or
- i. that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed or an attempt has been, is being or is likely to be made to conceal or destroy such information.⁷

While this is a fairly wide list, it should be noted that 'relevant wrongdoing' generally does not cover issues relating to the worker's own contractual arrangements with their employer.⁸ Reporting a grievance arising from your contract, such as a pay dispute, or grievances about interpersonal conflicts between you exclusively and another worker, will not typically be a protected disclosure. Further, making such a complaint to or about your employer that affects you exclusively will not be a protected disclosure. However, in some cases grievances/complaints and 'relevant information' might overlap and we always suggest that you get legal advice to help you clearly distinguish between the two.

The Act sets out how reports of relevant information should be made if they are to qualify as 'protected disclosures'. These are addressed in the next section.

3. Making a report in one of the ways specified in the Act

In addition to the information below, see the Types of Protected Disclosure diagrams on pages 34-38.

a. First port of call

Generally speaking, the Act encourages a worker/reporting person to make a first report of relevant information to any of the following:

- their employer;
- a third party authorised by the employer to receive protected disclosures;
- a responsible person – this applies where the worker/reporting person reasonably believes that the relevant wrongdoing relates mainly to (i) the conduct of a person other than the employer or (ii) something for which a person other than the employer has legal responsibility.

There is no legal requirement to make a report to one of these people in the first instance. There are circumstances under which a report of relevant information can be made by a worker/reporting person externally to someone else and still qualify as a 'protected disclosure' under the Act. However, there are additional hurdles to overcome in these cases in order to attract the protections under the Act. Details are set out on 9-11.

It is therefore often easiest to report to an employer or the person legally responsible for dealing with the wrongdoing in the first place. Another benefit of turning to your employer first is that they are often best placed to deal with wrongdoing within their own organisation and protect you from penalisation for having raised a concern of wrongdoing. Prudent employers value learning about issues at an early stage and fixing them before they do further harm.

Who is my employer?

If you are:	Your employer (for the purposes of the Act) is:
An employee	The person (i) with whom you have/had or (ii) you work/worked for under your contract of employment ⁹
A contractor	The person (i) with whom you have/had or (ii) with whom you work/worked under your contract
An agency worker	The person for whom you work/worked or the person (such as the agency) who supplied you
A work experience student or trainee	The person who provides/provided the work experience or training
A shareholder	The undertaking of which the worker/reporting person is or was a shareholder
A member of an administrative, management or supervisory body, including non-executive board members	The undertaking, the administrative, management or supervisory body of which the worker/reporting person is or was a member
A volunteer	The person for whom the individual is or was a volunteer
A job applicant involved in recruitment or pre-contract processes.	The person by whom or on whose behalf the recruitment process/ pre-contractual processes concerned is or was carried out
A civil servant	The State, a Minister of the Government, a Department or a Scheduled Office in which you hold office ¹⁰
A member of An Garda Síochána	The Commissioner of an Garda Síochána
A member of the Permanent Defence Force or the Reserve Defence Force	The Minister for Defence

See sections 3(1) and (2) of the Act for full details.

b. Prescribed persons

Protected disclosures can also be made to 'prescribed persons'. These include regulators such as the Data Protection Commissioner and the Comptroller and Auditor General.¹¹ The Office of the Protected Disclosures Commissioner (OPDC), was created by s.10A of the Protected Disclosures Act. The OPDC is a 'prescribed person' of last resort under the Act.

A report of relevant information may be made to a 'prescribed person' or to the OPDC where the worker/reporting person makes a disclosure of 'relevant information' and also:

- reasonably believes that the relevant wrongdoing falls within the prescribed person's remit,¹² and
- reasonably believes that the information (and any allegation contained within it) is substantially true.¹³

The OPDC directs reports to the right 'prescribed person'. The OPDC can also direct reports to a 'suitable person' if the matter does not come under the remit of any 'prescribed person' or if transmitting it to a prescribed person would create a risk of serious penalisation against the reporting person or that evidence of the relevant wrongdoing would be concealed or destroyed. This might include your employer in certain circumstances.

The OPDC can accept a report and follow it up if there is no other appropriate organisation as a 'prescribed person of last resort'. The OPDC can receive reports of wrongdoing:

- directly from a worker/reporting person;
- from a Minister, who must send it to the OPDC within ten days of receipt, or;
- from a 'prescribed person'.

c. Disclosures to relevant institutions, bodies, offices or agencies of the European Union

Protected disclosures of 'breaches' (see below for the definition of a 'breach') can be made to a relevant institution, body, office or agency of the European Union.¹⁴ For a disclosure to these EU bodies to be protected, the worker/reporting person must have reasonable grounds to believe:

- that the information on breaches reported was true at the time of reporting, and
- that such information fell within the scope of the EU Whistleblowing Directive.¹⁵

A 'breach' is defined generally as an unlawful act or omission that contravenes certain European Union Acts.¹⁶ These Union Acts concern:

- public procurement;
- financial services, products and markets, and prevention of money laundering and terrorist financing;
- product safety and compliance;
- transport safety;
- protection of the environment;
- radiation protection and nuclear safety;
- food and feed safety and animal health and welfare;
- public health;
- consumer protection;
- protection of privacy and personal data, and security of network and information systems;

Unlawful acts or omissions that impact the financial interests of the Union or the internal market would also meet the definition of a 'breach'. Unlawful acts or omissions affecting the internal market would include breaches of Union competition and State aid rules, acts which breach the rules on corporate tax, or arrangements intended to obtain a tax advantage defeating the object or purpose of corporate tax law.

d. A Minister

If you are employed by a public body, a report of relevant information can also be made to an appropriate Government Minister.¹⁷

A worker/reporting person in the public sector who wishes to report to an appropriate Government Minister should be aware this will only be a 'protected disclosure' if a number of additional criteria are satisfied.

This means that the law will cover you only if you disclose 'relevant information' and one or more of the following criteria is met:

- You have previously made a report of substantially the same information to your employer, a prescribed person or (if you work for a public body) a relevant Minister, but no feedback has been provided within three months (or six months if an extension was made for disclosures to prescribed persons), or, where feedback has been provided, you reasonably believe that there has been no follow-up or that there has been inadequate follow-up;
- You reasonably believe the head of the public body you are/were employed in is complicit in the relevant wrongdoing you are seeking to report;
- You reasonably believe that the relevant wrongdoing you are seeking to report may constitute an imminent or manifest danger to the public interest (for example, where there is an emergency situation or a risk of irreversible damage).

e. Others

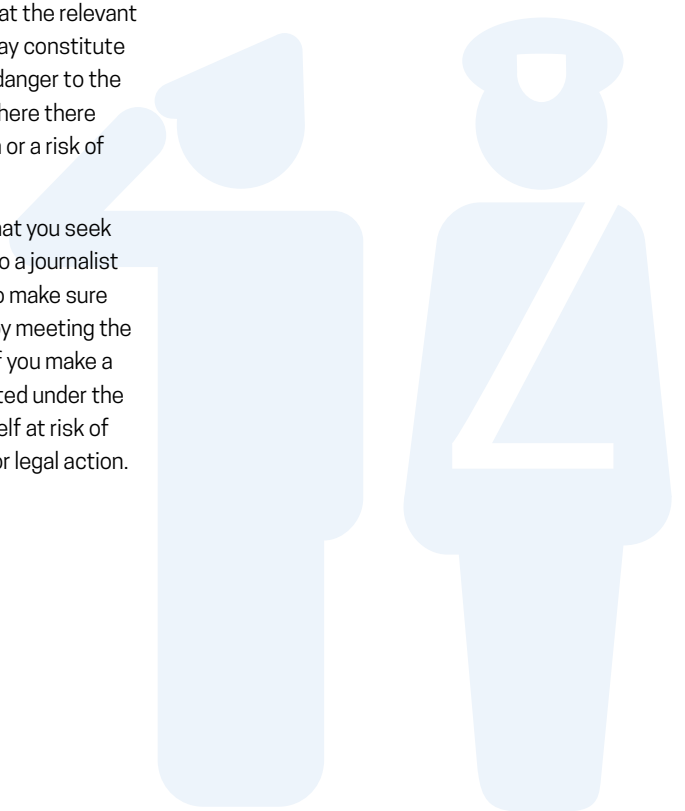
If you are a worker/reporting person who wishes to report relevant information in some other way, such as to a journalist or a member of the Oireachtas,¹⁸ it is important to be aware this will only be a 'protected disclosure' if a number of additional criteria are satisfied.

This means that the law will cover you only if you disclose 'relevant information' and:

- a. You reasonably believe that the relevant information and any allegations contained therein are substantially true; and
- b. One or more of the following conditions are met:
 - You have previously made a disclosure of substantially the same information to your employer,¹⁹ a prescribed person or (if you work for a public body) a relevant Minister, but no appropriate action was taken within three months (or six months if an extension was made for disclosures to prescribed persons);

- You reasonably believe that you will be penalised if you make your disclosure to a prescribed person, the OPDC or (if you work for a public body) a relevant Minister;
- You reasonably believe that there is a low prospect of the relevant wrongdoing being effectively addressed if you make your disclosure to a prescribed person, the OPDC or (if you work for a public body) a relevant Minister, due to the particular circumstances of the case, such as those where evidence may be concealed or destroyed or where a prescribed person may be in collusion with the perpetrator of the wrongdoing or involved in the wrongdoing;
- You reasonably believe that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.²⁰

We always strongly advise that you seek legal advice before you talk to a journalist or any other such recipient to make sure that you are fully protected by meeting the criteria summarised above. If you make a disclosure that is not protected under the Act, you will be putting yourself at risk of danger, such as disciplinary or legal action.



f. What if my concern relates to law enforcement, state security or intelligence?

There are special provisions for relevant information which concerns law enforcement, security, defence, international relations and intelligence. If the information you wish to report falls under these headings, be sure to seek legal advice and make your advisors aware of this before making a report. The following information is only a summary of the kind of issues that you should be aware of and is not comprehensive.²¹ Relevant information should generally be reported to your employer or the appropriate prescribed person if that information might reasonably be expected to facilitate the commission of an offence or to prejudice/impair the following:

- a. Prevention or investigation of offences, prosecution of offenders or the effectiveness of systems used for those purposes;
- b. Law enforcement;
- c. Safety systems;
- d. The fairness of court proceedings;
- e. The security of certain institutions including prisons and remand centres; or
- f. The security of Garda, Defence Forces or prison communications systems.

Such reports can also be made to a member of Dáil Éireann or Seanad Éireann in certain circumstances. Disclosures of relevant information that contain taxpayer information²² can only be made to the Comptroller and Auditor General.²³ However, a

number of additional conditions must be satisfied in these cases. These include the requirements set out under the section entitled “Others” on page 10.

Disclosures of relevant information which might reasonably be expected to (a) adversely affect the security, defence or international relations of the State; or (b) reveal the identity of person who has provided confidential information to a public body in relation to law enforcement or any other source of such information given in confidence, will not be a protected disclosure unless reported to the worker’s employer or if the worker is employed by a public body to a relevant Government Minister. A report of relevant information can be made to the “Disclosures Recipient” (see page 32 for contact information) where the requirements set out in the “Others” section above are satisfied.

4. Summary

If you wish a report to be protected under the Act, you should be able to answer yes to the following:

- Are you a worker/reporting person as defined in the Act?
- Does the information you wish to report come to your attention in a work-related context?
- Do you genuinely believe that the information tends to show one or more relevant wrongdoings set out on page 6?
- Would another reasonable person (imagine someone else who has the same information and is faced with the same set of circumstances) also believe that the information tends to show one of more relevant wrongdoings set out on page 6?
- Have you considered making a report to your employer in the first instance?
- If reporting elsewhere, do you satisfy the criteria set out in the Act?

If you are in any doubt about whether you can answer yes to these questions or are worried about the potential consequences of reporting your concerns, you should seek legal advice before doing so.

Remember that you can also contact our Speak Up Helpline (see page 32 for details and information on other potential sources of support).

What protections will I have?

If your report qualifies as a protected disclosure under the Act, you will have the following protections.

a. Will people know what I have done?

Workers/reporting persons are often understandably concerned about their colleagues and others finding out that they have made a report of wrongdoing. Some employers, such as US publicly-traded companies, must provide their employees with anonymous reporting channels which can be used by a worker/reporting person without giving their name.

The Act does not prohibit anonymous protected disclosures, but it may affect the obligation the recipient has to accept and follow-up on the disclosure. If an anonymous disclosure is made internally, employers are not obliged to accept and follow-up on it unless they consider it appropriate to do so. If an anonymous disclosure is made to a prescribed person or the Protected Disclosures Commissioner, they must apply the same procedures to the disclosure as if the worker had identified themselves, unless prohibited by or under any other law.

In any event, workers who make anonymous disclosures are entitled to the same protections from retaliation under “the Act” as a worker who made their disclosure with their identity known.

Where a worker/reporting person’s identity is known, recipients of protected disclosures, and those involved in acting on them, must protect the identity of the worker/reporting person making the protected disclosure. They are not allowed to reveal any identifying information, either directly or indirectly, without your explicit consent unless an exception (as specified in the Act) applies.

Employers and other recipients of protected disclosures must protect the identity of the worker making the protected disclosure.

Confidentiality v Anonymity

These two terms are often confused or used interchangeably.

The words 'confidential report' can mean different things but can be used to describe circumstances where you have shared your identity with someone when reporting, on the understanding that they will not share your name or other identifying details with anyone else without your permission.

An anonymous report is one in which you have not shared your name or any details that could be used to easily identify you.

There are a number of issues that you might want to consider if you are thinking about making an anonymous report:

1. While the Act affords you what might be called a qualified right to confidentiality, there is no right to anonymity in the legislation.²⁴ If you made an anonymous disclosure but your identity is subsequently revealed, your name may be disclosed to persons involved in the receipt, transmission, or follow-up on your disclosure without your permission.
2. If you make an anonymous disclosure but you are suspected of having blown the whistle, it may also be harder for you to show that any reprisal arose from making the disclosure. If you make an anonymous disclosure, you will still have to show

that it was you who made it, and that those enacting the reprisal were aware of this, if you are to claim any protection under the Act.

3. Thirdly, recipients might not be obliged to accept or follow up on a report that you make if you withhold your name (see page 19-24). Investigators will sometimes not act on information if you are not prepared to identify yourself as a credible witness.

Nonetheless, there are circumstances where it may be safer for you to withhold your name. The information you provide may also be so detailed or comprehensive that someone will be able to act without needing to know who has shared this information. Again, it is important to seek legal advice before you do anything.

Remember that whether you provide your name or make an anonymous report, your identity might become known to others. You might also be identified by the nature of the information you share, by questions you previously asked openly at staff meetings, or because management believe they need to share your identity for the purposes of an investigation.

Whatever type of report you make, it is recommended that you consider taking some of the steps outlined on page 25-29 and that you get legal advice early.

Exceptions include where the recipient of the disclosure reasonably believes that revealing the worker/reporting person's identity is necessary for the purposes of the receipt or transmission of, or follow-up on your disclosure, that it is required by law, or that it is reasonably believed to be necessary to prevent a serious risk to the security of the State, public health, public safety or the environment.²⁵

The Act requires that where possible you be notified in writing, along with the reasons for the decision, before any information that might identify you is disclosed when:

- The disclosure is reasonably believed to be necessary to prevent a serious risk to the security of the State, public health, public safety or the environment;
- The disclosure is a necessary and proportionate obligation imposed by Irish or European Union law in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned.

This obligation does not apply if the notification would jeopardise:

- the effective investigation of the relevant wrongdoing concerned;
- the prevention of serious risk to the security of the State, public health, public safety or the environment, or
- the prevention of crime or the prosecution of a criminal offence.

b. Immunity from legal action

Defamation proceedings can be brought against someone who makes a protected disclosure. However, when making a protected disclosure you will have the defence of 'qualified privilege' meaning that it will be difficult for anyone to win a case against you if you can show that you complied with the Act and did not make a maliciously false disclosure.²⁶ Similarly, if disclosing the information is an offence and you are prosecuted for it, it is a defence to show that the report was a protected disclosure (or at least that you reasonably believed that it was).²⁷

There is no legal basis for other civil proceedings arising from having made a protected disclosure, such as breach of confidentiality.

Bear in mind that if you make a report that you know is false, this is not a protected disclosure. Making a protected disclosure that contains information you know to be false is a criminal offence. You will also be exposed to legal action for damages, including defamation.

c. What if my employer penalises or dismisses me?

Most whistleblowers are not dismissed from their jobs, but it can happen. An employee or agency worker who is dismissed for having made a protected disclosure can claim unfair dismissal– and potentially be reinstated or reengaged or awarded a sum up to five years' salary in compensation.²⁸ Normally, employees can only claim unfair dismissal after they have been employed continuously for a year. This does not apply where an employee is dismissed for having made a protected disclosure. In other words, an employee is protected from dismissal for making a protected disclosure from 'day one' of their employment.

If your employer does not dismiss you but you are penalised or threatened with penalisation²⁹ in some other way – such as by being demoted or having your hours cut you can seek an award of compensation of up to five years' salary. Employers are also liable if they cause or permit any other person to penalise you. You are protected from your first day of employment.

Claims for unfair dismissal and penalisation must be made to the Workplace Relations Commission (WRC) within six months of the date of dismissal/first date of penalisation. Appeals can be made from decisions of the WRC to the Labour Court.³⁰ You can find further information here:

www.workplacerelations.ie

Additionally, employees who have been dismissed³¹ or penalised³² can seek a court order known as interim relief within 21 days of the last instance of penalisation or served with notice of dismissal. This prevents their dismissal or any alleged penalisation (such as disciplinary action) until a decision is reached by the WRC in their case.

Proceedings in the WRC and the Courts are generally held in public and published decisions may identify parties by name. You should speak with a solicitor about this if you are concerned about the pros and cons of taking such action, such as being identified as a reporting person.

We recommend seeking legal advice before making a protected disclosure, particularly if you are considering identifying anyone in your report.

d. I'm not an employee – what about me?

You do not need to have a contract of employment or even be a worker/reporting person to enjoy protection under the Act. If you suffer a detriment – such as harassment or loss – as a result of a worker/reporting person having made a protected disclosure, you have a right to sue for damages. It does not matter whether it was you or someone else who made the protected disclosure.

This protection is intended to be wide enough to cover, for example:

- family members who are blacklisted as a result of a protected disclosure having been made by a relative;
- a worker who is disciplined for being a whistleblower, when it was actually their colleague who made a protected disclosure; and
- an agency which suffers a loss of contract after an agency worker blows the whistle on an organisation they have worked for (such as an agency nurse supplied to a hospital).
- facilitators who help someone make a protected disclosure.

If you are unsure whether you fall under any of these categories or if you might be protected in some other way, we suggest you seek advice through our Speak Up Helpline or a legal advisor.

e. What other protections are there?

Since 2023 it has also been an offence,³³ punishable with up to two years in prison and/or a fine up to €250,000 to:

- hinder or attempt to hinder a worker/reporting person in making a report;
- penalise or threaten penalisation, or causes or permits any other person to penalise or threaten penalisation against a worker/reporting person, a facilitator, a third person who is connected to the worker/reporting person and who could suffer work related penalisation, or a legal entity the worker/reporting person owns or works for or is otherwise connected with;
- bring vexatious proceedings against any person or legal entity referred to above
- breach the duty of confidentiality regarding the identity of worker/reporting persons;³⁴
- make a report containing any information that the worker/reporting person knows to be false³⁵
- fail to comply with the requirement to establish, maintain and operate internal reporting channels and procedures.

If you are unsure about what protections you might have when reporting or someone has been penalising you, we suggest that you seek legal advice as early as possible. Free confidential guidance is available through our Speak Up Helpline (see page 32 for details and information on other potential sources of support).

What should I expect when I report?

a. What you should expect from your employer

If you are reporting to an employer, make sure you find out whether they have a whistleblowing policy and procedures in place and that you follow any such procedures carefully. It should set out exactly how a protected disclosure to your employer should be made. For example, you may need to report to a designated person or you may be directed to a hotline. Employers that are public bodies, as well as private sector companies with more than 50 staff³⁶ have a legal duty to put whistleblowing procedures in place and to provide internal reporting channels. Certain companies in the areas of financial services, products and markets, prevention of money laundering and terrorist financing, transport safety, and protection of the environment (offshore oil and gas operations) must have formal protected disclosures procedures in place irrespective of the number of staff in such organisations.³⁷ They must also provide written information on them to their workers.

As mentioned earlier, a number of employers are encouraging workplace whistleblowing. Organisations should have clear policies and procedures in place which allow you to:

1. Seek legal advice or representation before and after you make a protected disclosure;
2. Report to your employer through multiple channels such as a dedicated hotline, internal audit/compliance, human resources or your organisation's audit committee;
3. Confidentially share information in writing or orally;
4. Where possible, be provided with an indicative timeframe and details of the steps your employer might take in following up on your report; and
5. Be kept informed of progress of any investigation arising from your report.

Private sector employers with more than 50 staff, along with all employers in the public sector, must acknowledge in writing protected disclosures made within seven days.

They must also diligently follow-up on disclosures, which includes a carrying out an initial assessment of the disclosure to identify appropriate actions to take in response. If the employer decides to refer the disclosure to be dealt with under a different process, such as grievance procedures, they must notify the worker/reporting person of this decision along with the reasons for it.

These employers must also give feedback to the worker/reporting person within three months from the date the acknowledgement of the disclosure was sent. The worker/reporting person can request further feedback in writing every three months until the process has concluded.

You will also want to be assured that, when you report a concern, you will be protected from penalisation, which might take the form of both formal and informal sanctions by your employer and/or colleagues. Formal sanctions include disciplinary hearings, dismissal, reductions in pay or responsibilities, and demotion. Informal sanctions include bullying and isolation by colleagues. Your employer should make its legal responsibilities under the Act, as well as the importance of speaking up, clear to your co-workers and management.

It is important to check the details of your employer's whistleblowing policy before making a report, to see whether these types of issues are covered. If you have any questions, seek legal advice on the wording of the policy. It is also worth finding out if your employer has disciplinary procedures in place for anyone who threatens or causes you harm.

You should not have to take legal action to defend your right to speak up (although this might sometimes be necessary). As always, however, we recommend that you seek legal advice before making a report to your employer, especially if you are unsure about your rights or responsibilities.

b. What you should expect from 'prescribed persons'

Prescribed persons are typically regulators such as the Data Protection Commissioner and the Comptroller and Auditor General that are prescribed as recipients under the Act. When reporting to a prescribed person, check their policies and procedures first. Prescribed persons are obliged to share certain information on their websites that aids workers in disclosing wrongdoings. This includes:

- The conditions for qualifying for protection under the Act.
- Contact details of designated recipients, which would include electronic and postal addresses as well as telephone numbers. They must also say whether the telephone conversations are recorded.
- The procedures that apply, including:
 - > how the prescribed person might engage with the worker/reporting person on the information reported
 - > the period for providing feedback (including further feedback), and
 - > the form feedback will take.

- How the confidentiality of reports is maintained.
- How personal data is processed.
- What follow-up actions they might take on reports.
- The remedies and procedures for protection against penalisation.
- The availability of, and contact information for, advice for persons contemplating making a report.
- The conditions under which a reporter is protected from incurring liability for a breach of confidentiality.

Prescribed persons must acknowledge in writing protected disclosures made within seven days, unless you explicitly request otherwise, or the prescribed person reasonably believes, that acknowledging receipt would jeopardise the protection of your identity. They must diligently follow-up on disclosures, which includes carrying out an initial assessment of the disclosure to identify if there is prima facie evidence of a relevant wrongdoing and the appropriate actions to take in response. The prescribed person must notify the worker/reporting person in writing of decisions it makes arising from its assessment of their disclosure .

Prescribed persons must also give feedback to the worker/reporting person within three months from the date the acknowledgement of the disclosure was sent. This deadline can be extended to six months in duly justified cases, although the prescribed person must notify the worker/reporting person of the extension. The

Bear in mind that a disclosure to someone like a journalist or a TD will be a protected disclosure only if a number of conditions are met.

worker/reporting person can request further feedback in writing every three months until the process has concluded. The prescribed person must also, to the extent legally possible, share the outcome of any investigation with the worker/reporting person.

A worker/reporting person is obliged to cooperate with the prescribed person in acting on their report insofar as it does not prejudice his/her own rights. Remember that you should not feel pressured into saying anything or sharing information until you feel it is safe to do so. We recommend seeking legal advice before reporting to a prescribed person, to ensure that you get the benefit of the protections under the Act (such as protection for your identity), or if you are concerned about the extent to which you will be required to cooperate with any investigation.

c. What you should expect when reporting to the Protected Disclosures Commissioner

As with prescribed persons, The Protected Disclosures Commissioner (OPDC) must publish information on its websites on how to disclose wrongdoings. This includes:

- The conditions for qualifying for protection under the Act.
- Contact details of designated recipients, which would include electronic and postal addresses as well as telephone numbers. They must also say whether the telephone conversations are recorded.
- The procedures that apply, including:
 - > how the prescribed person might engage with the worker/reporting person on the information reported
 - > the period for providing feedback (including further feedback), and;
 - > the form feedback will take.
- How the confidentiality of reports is maintained.
- How personal data is processed.
- What follow-up actions they might take on reports.
- The remedies and procedures for protection against penalisation.
- The availability of, and contact information for, advice for persons contemplating making a report.
- The conditions under which a reporter

is protected from incurring liability for a breach of confidentiality.

The OPDC must acknowledge in writing protected disclosures made to it within seven days unless you explicitly request otherwise, or the OPDC reasonably believes that acknowledging receipt would jeopardise the protection of your identity. Although the OPDC can investigate reports made to it directly, its main function is to identify a prescribed persons or other suitable person that has the legal authority to act on the report. Suitable persons who receive a disclosure from the OPDC have the same obligations in respect of follow-up and feedback.

The OPDC must notify the worker/reporting person in writing when it refers a report to another person and must outline the reasons for doing so. The OPDC has to transmit the report within 14 days of receiving it. The OPDC must notify the worker/reporting person in writing if an extension to this time limit is needed and explain why this is the case.

The OPDC must also notify the worker/reporting person if they accept the report because no suitable recipient could be found. Where the OPDC accepts a report, it must diligently follow-up on disclosures.

The OPDC must also give feedback to the worker/reporting person within three months from the date the acknowledgement of the disclosure was sent. This deadline can be extended to six months in duly justified cases, but the OPDC must notify the worker/reporting person of the extension. The worker/reporting person can request further feedback in writing every three months until

the process has concluded. The OPDC must also, to the extent legally possible, share the outcome of any investigation with the worker/reporting person.

A worker/reporting person is obliged to cooperate with the OPDC and 'suitable persons' in acting on their report insofar as it does not prejudice his/her own rights. Remember that you should not feel pressured into saying anything or sharing information until you feel it is safe to do so. We recommend seeking legal advice before reporting to a prescribed person, to ensure that you get the benefit of the protections under the Act (such as protection for your identity), or if you are concerned about the extent of cooperation required during any investigation.

d. What you should expect when reporting to a Minister

Workers in public bodies no longer have a legal right to directly report to a relevant Minister unless they meet the criteria introduced under the amended Act. These criteria are summarised on page 10.

It should also be noted that Ministers who receive disclosures in such circumstances must pass it to the OPDC within 10 days without having reviewed them beforehand.

In such cases, you might have to seek feedback from the OPDC rather than the Minister or government department to whom you made the initial report.

e. What you should expect when reporting to others

Journalists and TDs may be friendly, personable, supportive and listening; but generally, their loyalty is what they consider to be the public interest, not to you.

Journalists are bound by professional codes not to reveal their sources and will often defend their right in court not to share the identity of whistleblowers. However, journalists do not have to work to your timescale and may not want or be able to publish your story.

If you talk to a journalist and you are not sure that you want them to publish a story, or to remain anonymous, you should lay out ground rules in advance.

If you agree that something is 'on the record' it means there are no restrictions on publishing what you have shared or your identity. Unless you say you are not speaking on the record, they might presume that you are.

Telling a journalist that something is 'off the record' means they should not publish the information you provide or any of your identifying information in a way that can be traced back to you. They might share the information without naming you with another source to verify it.

Sharing information for 'background' means the journalist may use the information without publishing it or naming or identifying you as the source. Telling a journalist that

your comment is ‘not for attribution’ means they can publish quotes but only identifying you in general terms that you have agreed in advance (e.g., ‘a government official’).

You should be aware that none of these ‘rules’ are legally binding, so we advise exercising some caution. If a journalist can find enough information elsewhere to publish and believe it is in the public interest to publish, they might also print the story. Some journalists will encourage you to go on record or on camera. Remember that the decision to speak up is yours alone and that there are sources of advice and support available, including the Speak Up Helpline, before you talk to the media (see page 32 for more details).

Likewise, members of the Oireachtas (TDs and Senators) can play an important role in bringing public attention to wrongdoing. But, like journalists, they are not whistleblowing advisors. Although they enjoy immunity against prosecution for anything they say in parliament, you may be exposed to legal action and other forms of detriment if they reveal your identity. Although all recipients of protected disclosures (including TDs) need to comply with the Act by protecting your identity, in reality, details of your report may be ‘leaked’ to the press, who may choose to publish your name.

Bear in mind that a disclosure to someone like a journalist or a TD will be a protected disclosure only if a number of conditions are met (see pages 10-11). We strongly recommend seeking legal advice before

making such a disclosure (see page 32 for more details on sources of support). Make sure you discuss any doubts you have about what you are planning to report – as a minimum, you will need to be sure that you believe that the information and allegations are substantially true.

f. What you should expect when seeking advice

Even those you expect to be supportive – such as legal professionals – may sound unsympathetic at first. This should not necessarily be taken as a sign that they do not believe you. Your advisors are likely to ask hard questions, may interrupt you while you tell your story and may initially sound sceptical. Some will play ‘Devil’s Advocate’ to make sure they have looked at the information from different angles. Each professional will have their own way of getting to the bottom of the story.

You should not accept being treated disrespectfully but you should not expect everyone to sound like they are on your side. For that reason, making your story as clear as possible will save time and ease the pressure on you.

Six Steps to Speaking Up Safely

1. Make sure you can explain why and what you are reporting

When deciding to make a protected disclosure, we suggest that you can explain 1) why you are reporting and 2) what you are reporting.

It will often be clear why you need to make a protected disclosure and your employer should have clear procedures in place, but sometimes you will be asked to explain why you are sharing your concerns. Perhaps you do not have the authority to fix the problems you are highlighting. Or the issues you are highlighting may be so serious – such as an imminent threat to the health and safety to the public – that you needed to alert a regulator with your concerns straight away. Having a written record of communication on an issue – such as any questions you asked about a problem - can also help others understand why you made your disclosure.

Before sharing details of your concern, it may also be helpful to keep a diary or contemporaneous notes of relevant information and keep them in a safe place.

If you are concerned that this information could be accessed without your consent or that it might harm you in some way, you should take additional precautions. Do not print this information at work or leave notes or documents where colleagues can access them. Do not save sensitive information on shared storage systems or work servers and avoid sending emails with such information from your work email address (see point 6, on page 28).

Consider structuring your story using timelines. Limit the summary of your story to about two full pages of text and highlight the most important pieces of information for the reader. Not only will this save you time, but it is also more likely that people will understand the information you are sharing. If you have any evidence, you can attach it to your summary or a more complete document that explains your concerns in more detail. If possible, try to tell your story without making any direct allegations against anyone who could be easily identified. If you identify individuals in your disclosure, we suggest that you seek confidential legal advice before sharing it (see point 2).

2. Seek Legal advice early

Make sure that you seek legal advice on your options as soon as possible. The most important thing is that you make an informed decision about the steps you should take, your legal rights and responsibilities (especially when naming others or reporting to someone other than your employer), as well as the consequences of making a protected disclosure.

The Act states that the disclosure of relevant information to a barrister, solicitor or trade union official in the course of obtaining legal advice is itself a protected disclosure.³⁸

This means that (in addition to their duties of confidentiality and ethics), they are legally obliged to comply with the Act. This includes keeping your identity secret unless there are circumstances falling under one or more of the exceptions set out in the Act. Barristers and solicitors are subject to legal professional privilege and cannot make protected disclosures of information shared with them by a worker in the course of obtaining legal advice. There are some instances where a solicitor or barrister may be obliged to make mandatory disclosures.³⁹

If you are contacting your trade union, you should be aware that a person implicated in the wrongdoing you are reporting may also be represented by the same trade union. In such cases, you should ask your trade union representative about whether your trade union subscription covers the cost of alternative representation or legal advice.

Remember that you can also contact our Speak Up Helpline (see page 32 for details

and information on other potential sources of support). Your employer may also operate an internal helpline that allows you to seek legal advice before you make a disclosure.

Please note that if there is an imminent risk to the safety of children or serious harm to others, you may have a legal obligation to report to the relevant authorities as soon as possible.

3. Be cautious when gathering evidence

Your employer will normally take the lead in investigating your concern and you should avoid gathering evidence yourself. Where evidence gathering is absolutely necessary, it should be done on the advice of a legal professional. Although you will need to show that you have a 'reasonable belief' that wrongdoing was taking place, you may not need documentary evidence to hold such a belief. Whether or not your belief is reasonable will depend on all of the circumstances of the case and this is something which your advisor should help you with.

As set out in further detail earlier in this guide, if you are reporting to a prescribed person or 'others,' you will also need to be able to show that you reasonably believe that the information and any allegations are substantially true. Your advisor should assist you in deciding whether you need any verifying documents or witness evidence to support your disclosure.

If you think any available evidence is safe where it is – i.e., you believe it is unlikely to be hidden or destroyed – then it might be enough to direct your employer or an

investigator to that information. If, however, you think it is necessary to protect evidence then you should seek legal and technical advice before you copy, store or share such information with anyone else. Acts carried out by a worker while preparing to make a protected disclosure, such as copying or removing files, may not be protected.

4. Devise your strategy

It might sound daunting, but devising a strategy and planning ahead can help you navigate what could be difficult terrain. You will need to explain to yourself why and what you want to achieve by blowing the whistle and consider practical questions, such as:

- Are there any other reasons why you are blowing the whistle?
- Can you communicate your concern without accusing anyone in particular of wrongdoing?
- Do you want to continue working at the organisation that employs you?
- What impact could reporting have on your career?
- How can these obstacles be overcome?

Your legal representatives can devise a legal strategy and inform you of the steps you will need to take to reach your desired goal. However, it is also worth thinking about the personal consequences of blowing the whistle. In some cases, you may be faced with attacks on your reputation by people who are implicated or employers who may want wrongdoing covered up. Although it is not a legal requirement to answer these questions, you might find it useful therefore to ask yourself:

- What can I be accused of?
- Have I done anything that could be used against me?
- Who do I need to convince that I am telling the truth?
- What information do I need to convince people I am telling the truth?
- Do I have people who can vouch for my character and my version of events?

Working on and talking through your strategy with your advisors means that you are better prepared for any attack – legal or personal – that may be launched against you.

5. Seek support

Your health is the most important factor in coping with any negative consequences of speaking up. Anxiety and depression are common symptoms amongst workers who suffer penalisation for reporting a concern. Some people may lose sleep or find it hard to eat. Some of our clients have found it difficult to go about their daily lives because of their treatment by co-workers, management or regulators.

It is for this reason that we suggest you seek medical advice as early as possible if you notice any of the following:

- anxiety or feelings of hopelessness
- loss of appetite
- difficulty in getting a full night's sleep
- relationship problems
- difficulty in focusing on your work, routine tasks or family life.

You should also find someone outside your workplace that you can talk to about how you

are feeling. Having support from family and friends before and after you report can make a big difference to your wellbeing.⁴⁰

If you would like to avail of free, confidential wellbeing and psychological services you can contact our Speak Up Helpline for further information, (see page 32 for details and information on other potential sources of guidance).

6. Communicate safely

Once you are ready to pick up the phone or put something in writing, you will need to consider how best to communicate your concern safely. Sometimes you may not wish to make a formal report but rather ask for clarity. For example, you may pose questions to internal audit about the reliability of the sales figures. Similarly, you may be concerned that a colleague is putting the health of people at risk. Asking your health and safety officer whether a practice is safe and focusing on the person's behaviour rather than the particular individual could help diffuse a potentially difficult situation. It is important to note that in raising your concerns informally you can still avail of the protections of the Act, as long as you meet the conditions set out in the Act, (see page 7-12). However, this entails disclosing information that in your reasonable belief tends to show a relevant wrongdoing. Simply asking questions might not be enough to afford you protections under the Act. It is not necessary to have raised your concern formally as a 'protected disclosure', although it is advisable to follow your organisation's policy and procedures if they have one.

If you make a formal report, stick to the 'relevant information' you are disclosing and do not draw conclusions about particular individuals or specific offences. It is also better to use a tone that is non-confrontational. For example, you might report that there are financial irregularities in your company's sales accounts. It might seem needless to say but going a step further and accusing the sales team of 'cooking the books' or engaging in fraud will probably lead to confrontation with your colleagues. These types of direct allegations should be avoided if possible, but if necessary should be done after seeking legal advice. Your employer may investigate protected disclosures which are made without giving your name (an anonymous report). If you provide your name, your employer will be under a legal obligation to protect your identity, as set out more fully on page 14. Your employer should seek your explicit consent before disclosing your identity to anyone other than those directly responsible for investigating your concern (see page 16 for more information).⁴¹ It would be useful to seek this assurance in writing before you make your report. They should also notify you in writing if they forward your concern to an investigator or another agency responsible for dealing with your disclosure.

Although your motivation for making a protected disclosure is largely irrelevant under the Act, it may come under scrutiny.⁴² It is important that you can clearly explain that your primary reason for reporting a concern is to see action is taken to address or investigate the wrongdoing.

It is very unlikely that anyone will have the interest, resources or technology to tap

your phone or listen in to your conversations. However, no electronic communication is completely safe or secure. Calling from a registered mobile phone can easily reveal your identity. If you are prepared to call a journalist or the police with information that could compromise your safety, avoid calling from your work landline, mobile or home phone. Instead, consider calling using an unregistered pre-pay SIM card. The goal is not to stop someone from listening in to your conversations but to make it harder for third parties to trace your calls – and ultimately your identity.

You should always avoid storing or sharing sensitive information on your work computer.



A calm whistleblower is a more credible whistleblower

Do not embellish your story or exaggerate. It is very important that you stick to the facts and avoid:

- jumping to conclusions about who might be implicated in any wrongdoing;
- directly accusing anyone of particular offences such as fraud; or
- openly speculating on the motives of anyone apparently involved in the alleged wrongdoing.

Any inaccuracies, false or misleading information that you knowingly share with investigators could undermine your credibility

You should also know that emails to or from your work account can be easily read by your employer and may be monitored. Instead, consider setting up an anonymous email address. It is also advised that you use an encrypted email account such as Proton Mail (<https://www.proton.me/>) to send more secure or anonymous messages. Also note that your IP address (your computer's identity) can be traced by third parties. Using TOR (<https://www.torproject.org/>) can hide your IP address and those websites you may have visited in preparation for making a disclosure. Remember to avoid downloading programmes like TOR or accessing services such as Proton Mail or Signal Messenger from your work computer.

and land you in trouble (see Immunity from legal action on page 16).

You should avoid using potentially inflammatory language that could distract from the substance of your disclosure. You might also want to avoid using underlined or capitalised words, coloured font, italics and exclamation marks in correspondence. Such devices can effectively SHOUT!!! at the reader.

Feel free to contact the Speak Up Helpline (see page 32 for details and information on other potential sources of support), if you need advice on how to communicate a concern.

Remember that a calm whistleblower will usually be considered a more credible whistleblower.

What should I do after I report?

1. Dealing with inactivity or disbelief

You may find that your employer (or the internal investigation team) decides that there are not sufficient grounds to address a risk that you have alerted them to.

If you still believe that wrongdoing has taken place or is ongoing, you may want to report your concern to a prescribed person.

What if you make a report to a prescribed person and nothing further happens? If you feel your report is not being taken seriously, is being covered up or is not acted upon within the timeframe the prescribed body has promised then you might make a complaint in writing to them. If you are still unsatisfied (and it is serious enough), you might consider reporting to someone beyond your employer or a prescribed body. You should seek legal advice before you do so.

Bear in mind that if you do not have enough information to convince a prescribed body or someone else like a journalist, they are unlikely to act on your report either.

2. Dealing with reprisal

If you are met with a negative reaction from your co-workers or employer, you should employ your strategy for dealing with retaliation. Examples of reprisal include disciplinary hearings, unfair performance appraisals, loss of duties, delegation of duties that you are not qualified for or relocation to another business unit, (see page 17).

Make sure to record any verbal threats or bullying by noting them down on paper and keeping your notes safe. Save any threatening emails sent to you in a safe place. If your computer is accessible to others, be sure to lock it using a password whenever you are away from your desk. If you are threatened verbally in person or by phone, make sure to take a note of the conversation as soon as possible. You might consider taping the conversation using a Dictaphone or similar device, but we strongly recommend that you consult your solicitor before you do so.

Your employer should not just be your first port of call but your first source of support in dealing with retaliation from co-workers. It is in your employer's interests and their legal duty to make sure you are free to share

information about wrongdoing without fear of reprisal. Report any reprisal, including penalisation from co-workers, to your employer (and if a member, your trade union) as soon as you have taken a note of it. You should check your employer's protected disclosures or grievance procedures to see if anyone has been designated to receive reports of penalisation.

If you experience penalisation, you should consider seeking legal advice as early as possible as the clock for seeking injunctive relief begins ticking from the date of last penalisation and for a claim before the WRC the clock starts from the date of the first instance of penalisation.

If you are reassigned or subjected to unfair disciplinary or performance appraisals, you should ask for a written explanation from human resources or senior executive management for the decision. You should also consider alerting internal audit and compliance or your board audit committee, who may have a role in addressing such behaviour.

In rare cases, a whistleblower might be subject to formal sanctions such as deduction of pay or dismissal (including forced redundancy). In these cases, you should contact your trade union official or legal advisor as soon as you can.

3. Moving on

Finally, if you have blown the whistle and the wrongdoing is still happening or management have refused to address wrongdoing, you may want to ask yourself whether it would be better to find a new job with an employer with whom you feel safer working.

Not everyone has the luxury of finding a new job. But for those who do, exiting the organisation may be the only way to effectively continue exposing wrongdoing while limiting the risk of penalisation. You should know that is also unlawful for a new employer to penalise you for having made a protected disclosure to your previous employer. Blacklisting is also prohibited under the Act and may be subject to injunctive relief (see page 17).

A time may come where you have to accept that you have done your best to alert others to harm and that there is nothing more that can be done. This may be the time for you to consider your strategy for getting on with the rest of your life. If you continue to struggle with the negative consequences of having made a protected disclosure, free wellbeing and psychological services are available through our Speak Up Helpline (see page 32 for details and information on other potential sources of guidance).

Resources

1. Helplines

Transparency International Ireland operates a confidential free-phone service for anyone considering reporting a concern or making a protected disclosure. The Speak Up Helpline operates from 10am to 6pm, Monday to Friday except bank holidays, Good Friday and Christmas Eve. You can contact our Speak Up team in the following ways:

- By Freephone at 1800 844 866 (or if calling from abroad +353 1 554 3965 -phone charges are applicable)
- By email to helpline@transparency.ie
- By encrypted email to trachelpdesk@hushmail.com
- By signal SMS to +353 87 385 9996
- By secure report channel at <https://helpline.speakup.ie>

Visit www.speakup.ie for more information on how to seek advice or report safely.

If you are an employer, trade union representative or represent a regulator, you might be interested in TI Ireland's initiative aimed at creating safer working environments for people to speak up called Integrity at Work (IAW). More information can be found on the programme at www.integrityatwork.ie.

If you are based in the UK (including Northern Ireland), we suggest you contact Protect, who operate a helpline

offering free advice to whistleblowers. The helpline is open from 9am to 6pm, Monday to Friday. Contact +44 20 3117 2520 or visit <https://protect-advice.org.uk/contact-protect-advice-line/>.

For links to TI helplines in different countries, visit <https://www.transparency.org/en/report-corruption>.

You can also find other whistleblowing support organisations worldwide at: <https://www.whistleblowingnetwork.org/>.

2. Potential External Reporting Channels and Recipients

- Office of the Protected Disclosures Commissioner (OPDC) (see pages 9 and 22 for more information): www.opdc.ie
- List of Prescribed Persons (see page 9 for information): www.gov.ie/en/collection/41798-protected-disclosures-whistleblowing-list-of-prescribed-persons
- An Garda Síochána (see page 10 for information): www.garda.ie/en/about-us/online-services/online-crime-reporting
- Reports of wrongdoing concerning security, defence, international relations and intelligence can be sent to the Disclosures Recipient (see page 12

for information). Emails can be sent to todisclosure@confidentialrecipient.gov. ie or by post to: Disclosures Recipient, c/o Office of the Protected Disclosures Commissioner, 6 Earlsfort Terrace, Dublin 2, D02 W773

3. Secure Communications Tools

- Free encrypted email tools - Proton Mail: <https://proton.me> and Hushmail: <https://hushmail.com>
- Signal App for sending encrypted SMS: <https://signal.org/en/>
- The Surveillance Self-Defense (SSD) kit for protecting sensitive communications online: <https://ssd.eff.org>
- Security First's Umbrella app - a free security handbook app: <https://secfirst.org/umbrella/>
- Tor Project - for more secure, anonymous online browsing: <https://torproject.org>

4. Other Useful Resources

- Protected Disclosures Act Workers Key Messages: <https://assets.gov.ie/247972/62937344-2300-412e-a326-26cfd0678b1b.pdf>
- Protected Disclosures Act Workers Key Messages – Irish: <https://assets.gov.ie/258066/9f7ccb53-33f5-45bf-b521-63c221d9bbb3.pdf>
- Protected Disclosures Act: Information for Employers: <https://assets.gov.ie/236871/97c7a68a-71a0-4212-aa79-5fe630fd5d12.pdf>
- Protected Disclosures Act: Information for Prescribed Persons: <https://assets.gov.ie/236872/d7008a3d-7557-4089-b288-2ed6b1f312b9.pdf>
- Guidance on protected disclosures for public bodies and prescribed persons: <https://assets.gov.ie/277081/c8a506a6-1e4c-41de-bc7f-6cba598f7638.pdf>

Types of Disclosure under the Protected Disclosures Act 2014⁴³

1. Making sense of the Act for workers in the Private and Non-Profit Sectors



**I am a worker/
reporting person
in the private or
not-for-profit sector**

Reporting Internally

I want to report 'relevant information' about wrongdoing.

You can report directly to your employer or through an authorised intermediary such as a hotline.

If your employer is not the appropriate 'responsible person' you can report to that person.

Reporting to a Prescribed Person/ OPDC

I want to report wrongdoing and have good reason to believe that the relevant information I have and any allegations I make are substantially true.

You can report to the public body (known as a prescribed person) or to the Protected Disclosures Commissioner.

Reporting to Others

I want to report wrongdoing and have good reason to believe that the relevant information I have and any allegations I make are substantially true.

I have either:

- reported internally and/or externally before and have good reason to believe that no action or insufficient follow-up action was taken on my report;
- good reason to believe I would be penalised effectively if I reported internally or to a prescribed person;
- good reason to believe that my disclosure would not be dealt with effectively if I reported internally or to a prescribed person;
- good reason to believe the wrongdoing constitutes an imminent or manifest danger to the public interest.

You may have a right to report to the media, a TD, or a Civil Society Organisation.

2. Making sense of the Act for workers in the Public Sector



I work for a public body

Reporting Internally

I want to report 'relevant information' about wrongdoing.

You can report directly to your employer or through an authorised intermediary such as a hotline.

If your employer is not the appropriate 'responsible person' you can report to that person.

Reporting to a Prescribed Person/OPDC

I want to report wrongdoing and have good reason to believe that the relevant information I have and any allegations I make are substantially true.

You can report to the public body (known as a prescribed person) or to the Protected Disclosures Commissioner.

Reporting to a Minister

I want to report wrongdoing and have good reason to believe that the relevant information I have and any allegations I make are substantially true.

I have either:

- reported internally and/or externally before and have good reason to believe that no action or insufficient follow-up action was taken on my report;
- good reason to believe that my disclosure would not be dealt with effectively if I reported internally or to a prescribed person;
- good reason to believe the wrongdoing constitutes an imminent or manifest danger to the public interest.

You can report to the appropriate Minister.

Reporting to Others

I want to report wrongdoing and have good reason to believe that the relevant information I have and any allegations I make are substantially true.

I have either:

- reported internally and/or externally before and have good reason to believe that no action or insufficient follow-up action was taken on my report;
- good reason to believe I would be penalised if I reported internally or to a prescribed person;
- good reason to believe that my disclosure would not be dealt with effectively if I reported internally or to a prescribed person;
- good reason to believe the wrongdoing constitutes an imminent or manifest danger to the public interest.

You may have a right to report to the media, a TD, or a Civil Society Organisation.

3. Making sense of the Act for workers who have information about breaches of EU Law



I have access to 'relevant information' which relates to a breach of EU Law

Reporting Internally

I want to report 'relevant information' about wrongdoing.

You can report directly to your employer or through an authorised intermediary such as a hotline.

Reporting to a Prescribed Person

I want to report wrongdoing and have good reason to believe that the relevant information I have and any allegations I make are substantially true.

You can report to a prescribed person or to the Protected Disclosures Commissioner.

Reporting to an EU Body

I want to report wrongdoing and have reasonable grounds to believe that the information on breaches reported was true at the time of reporting

You can report to the relevant institution, body, office or agency of the European Union

Reporting to Others

I want to report wrongdoing and have good reason to believe that the relevant information I have and any allegations I make are substantially true.

I have either:

- reported internally and/or externally before and have good reason to believe that no action or insufficient follow-up action was taken on my report;
- good reason to believe I would be penalised if I reported internally or to a prescribed person;
- good reason to believe that my disclosure would not be dealt with effectively if I reported internally or to a prescribed person;
- good reason to believe the wrongdoing constitutes an imminent or manifest danger to the public interest.

You may have a right to report to the media, a TD (who is not a Minister), or a Civil Society Organisation.

4. Making sense of the Act for workers who have information which could impair law enforcement if disclosed



I have access to 'relevant information' which might impair law enforcement if disclosed

Reporting Internally

I want to report 'relevant information' about wrongdoing.

You can report directly to your employer or to a legal advisor in the course of obtaining legal advice.

Reporting to a Prescribed Person

I want to report wrongdoing and have good reason to believe that the relevant information I have and any allegations I make are substantially true.

You can report to a prescribed person or to the Protected Disclosures Commissioner.

Reporting to Others

I want to report wrongdoing and have good reason to believe that the relevant information I have and any allegations I make are substantially true.

I have either:

- reported internally and/or externally before and have good reason to believe that no action or insufficient follow-up action was taken on my report;
- good reason to believe I would be penalised if I reported internally or to a prescribed person;
- good reason to believe that my disclosure would not be dealt with effectively if I reported internally or to a prescribed person;
- good reason to believe the wrongdoing constitutes an imminent or manifest danger to the public interest.

You may have a right to report to a TD or Senator. If the disclosure contains taxpayer information, it should normally be made to the Comptroller and Auditor General.

5. Making sense of the Act for workers who have information that if disclosed may adversely impact State Security, Defence or International Relations or which may reveal a confidential source



I have access to 'relevant information' that may adversely affect state matters if disclosed (see page 12).

Reporting Internally

I want to report 'relevant information' about wrongdoing.

You can report directly to your employer or to a legal advisor in the course of obtaining legal advice.

Reporting to a Minister

I want to report wrongdoing and have good reason to believe that the relevant information I have and any allegations I make are substantially true.

I have either:

- reported internally and/or externally before and have good reason to believe that no action or insufficient follow-up action was taken on my report;
- good reason to believe that my disclosure would not be dealt with effectively if I reported internally or to a prescribed person;
- good reason to believe the wrongdoing constitutes an imminent or manifest danger to the public interest.

You can report to the Minister.

Reporting to Others

I want to report wrongdoing and have good reason to believe that the relevant information I have and any allegations I make are substantially true.

I have either:

- reported internally and/or externally before and have good reason to believe that no action or insufficient follow-up action was taken on my report;
- good reason to believe I would be penalised if I reported internally or to a prescribed person;
- good reason to believe that my disclosure would not be dealt with effectively if I reported internally or to a prescribed person;
- good reason to believe the wrongdoing constitutes an imminent or manifest danger to the public interest.

You may have a right to report to the Disclosures Recipient.

End Notes

1. See Speak Up Report 2017, Transparency International Ireland, https://www.transparency.ie/sites/default/files/18.01_speak_up_2017_final.pdf
2. For example, under the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012.
3. See the definition of “worker” in section 3(1) of the Act for full details of who a ‘worker’ is. Members of the Garda Síochána and civil servants are deemed to be employees while members of the Permanent or Reserve Defence Forces are deemed to be workers (but not employees). This can affect the type of remedy available for adverse consequences for having made a protected disclosure. See page 5 for further details.
4. The Act refers to an employee as defined in section 1 of the Unfair Dismissals Act 1977: an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.
5. The Act refers to an individual who acquires information on a relevant wrongdoing during a recruitment process; or, an individual who acquires information on a relevant wrongdoing during pre-contractual negotiations.
6. A ‘breach’ means an unlawful act or omission falling within the scope of the Union Acts set out in Schedule 6 of the Protected Disclosures Act. Unlawful acts or omission that affect the financial interests of the Union or the internal market would also meet the definition of a ‘breach’. Breaches affecting the internal market would include breaches of Union competition and State aid rules, acts which breach the rules on corporate tax, or arrangements intended to obtain a tax advantage defeating the object or purpose of corporate tax law. More information is available on page 9.
7. See section 5 for definitions of “relevant information” and “relevant wrongdoing”.
8. See (b) above. It also does not cover (i) matters falling under an investigation function of the worker/reporting person or their employer, unless it involves an act or omission on the part of the employer or (ii) disclosures by legal advisors where a claim to legal professional privilege could be maintained by the person who sought legal advice.
9. Note that the word “person” in legislation is not limited to individuals and can include organisations. See section 18(c) of the Interpretation Act 2005.
10. This applies to civil servants within the meaning of the Civil Service Regulation Act 1956. A Schedule Office has the same meaning as it has in the Civil Service Regulation Act 1956.
11. Prescribed persons are set out in Statutory instruments made under the Protected Disclosures Act 2014. Information can be accessed online at https://www.irishstatutebook.ie/eli/isbc/2014_14.html#associatedsecondary
12. Also set out in the above orders.
13. See section 7 of the Act for full details.
14. See section 7B of the Act for full details.
15. See The Directive - (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.
16. See Schedule 6 of the Act for full details.
17. ‘Relevant Minister’ means a Minister of the Government with responsibility for the public body concerned in whom functions, whether statutory or otherwise, as respects that public body, are vested, or a Minister of State to whom any such function is delegated.
18. Other than to a Minister if you are a public sector worker
19. Or (as set out in the ‘First port of call’ section of this guide) the responsible person or a person authorised by your employer to receive a protected disclosure.
20. See section 10 of the Act for the full list of criteria in relation to making disclosures of relevant information to “others.”
21. See sections 17 and 18 of the Act for full details.

22. Taxpayer information is defined in section 851A of the Taxes Consolidation Act 1997, and means personal information obtained by Revenue (or a service provider engaged by Revenue), for the purposes of tax and duty legislation or which is prepared from this information. Information that does not directly or indirectly reveal the identity of a taxpayer to whom the information relates is not taxpayer information.
23. Other than taxpayer information that relates to certain breaches of EU Law, which can be disclosed to a relevant institution, body, office or agency of the European Union. Breaches of EU Law would include acts or omissions affecting the financial interests of the European Union (as referred to in Article 325 of the Treaty on the Functioning of the European Union and relevant Union measures), or those relating to the EU internal market (as referred to in Article 26(2) of the Treaty on the Functioning of the European Union). This would include breaches of EU competition and State aid rules, as well as breaches of corporation tax rules or arrangements intended to obtain tax advantages that defeat the object or purpose of corporate tax law.
24. The Act does not require the recipient of the disclosure to seek your permission to disclose your identity in every instance, so long as an exemption applies. See section 16 of the Act.
25. See section 16 of the Act for full details.
26. See section 14(2) of the Act.
27. See section 15.
28. This applies to employees rather than all workers. Employees are those who are or were employed under a contract of employment.
29. Penalisation is defined under s. 3(1) of the Act, and means any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report and causes or may cause unjustified detriment to a worker/reporting person. The Act outlines a non-exhaustive list of examples of acts that might constitute penalisation.
30. Provided that you are an employee, volunteer, undergoing work experience pursuant to a training course or programme or with training for employment or were involved in a recruitment process. See section 12 of the Act for more details.
31. Section 11 of the Act deals with unfair dismissal.
32. Section 7A of the Act deals with interim relief for penalisation
33. See section 14A of the Act.
34. The maximum fine for this offence is €75,000
35. The maximum fine for this offence is €100,000
36. From 1 January 2023, the obligation applies to organisations of over 250 members of staff and from 17 December 2023, it applies to organisations of over 50 members of staff.
37. These organisations are those that either fall within the scope of the Union acts referred to in Parts I.B and II of the Annex to the Directive (Schedule 6 of the Act) and those classes of employers subject of Orders by the Minister under s.6(6)(a)
38. See section 9 of the Act for full details. Officials of 'excepted bodies' as defined by section 6 of the Trade Union Act 1941 are also included.
39. For instance, these obligations may arise under section 19 of the Criminal Justice Act 2011 when involving suspicions of money laundering or terrorist financing, or under the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 when there may be suspicions of child welfare concerns.
40. Remember not to disclose the details of your protected disclosure.
41. You should be aware that they may not, in practice, give you any advance notice.
42. Where an employee's sole or main motivation for blowing the whistle is not to have the relevant wrongdoing investigated, compensation for unfair dismissal or penalisation may be reduced by up to 25%. Motivation may also impact on the level of damages recoverable in any action for damages in court. See also 'Immunity from legal action' on page 16.
43. These charts should be read with the Guide as a whole. They do not set out all of the requirements to comply with the law and are not legal advice. You should always seek legal advice before making a protected disclosure.



If you would like further guidance on blowing the whistle or dealing with an ethical dilemma at work, please contact our **Speak Up Helpline** on **1800 844 866**. You can also contact us online. Please see **www.speakup.ie** for further details.