

# SPEAK UP SAFELY

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



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

### **Speak Up Helpline**

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 securely online at **www.speakup.ie** or by using the Signal app to send us an encrypted message at 087 3859996 (www.signal.org). Only Signal-encrypted messages will be responded to.

### **Transparency Legal Advice Centre (TLAC)**

TLAC is Ireland's only independent law centre specialising in providing free legal advice to anyone who wishes to disclose wrongdoing or has already done so as provided for under Irish Law. Callers to the Speak Up Helpline may be referred to TLAC once their case has been assessed and if their case falls within TLAC's practice area. Callers will be offered an appointment with a TLAC solicitor where appropriate.

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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 whistleblowers than any other actor – including the police or the media. This is perhaps unsurprising, given that workers are probably most likely to witness wrongdoing within their organisations.

Numerous employers now encourage speaking up in the workplace. They recognise the benefits of being made aware of anything that is going wrong within their organisation and taking the opportunity to fix it before it leads to loss of standards, reputation, profit, stakeholders and customers. They also know that whistleblowing reduces the commercial costs of fraudulent activities.

Nonetheless, 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’s 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 workers 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 workers choose 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.<sup>1</sup> These types of mandatory reporting obligations fall outside the scope of this guide but feel free to call our Speak Up Helpline 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. 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 hundreds of clients who have come to us with a view to exposing wrongdoing. Many of the people who come to us for support have already 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.

When our clients contact us, we want to know whether:

1. The person making an allegation or sharing information has taken the right steps to protect themselves and to see something done about their concern;
2. (If the person has already made a report) they were treated fairly when sharing information or concerns; [and](#)
3. Their employer (or whoever else they made their report to, such as a regulator) acted appropriately.

The goal of asking these questions is to find out what help the client needs from us and to address the wrongdoing they are reporting. This 'client-focused' approach has shaped our services and the content of this guide.

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1. Under the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012.

# 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'.

There is a new law in Ireland called the Protected Disclosures Act 2014 (the 'Act' for short) which affects workplace whistleblowing. 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.

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 should 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 now faces prosecution for having done so. This is because the type of reports that he made are not permitted by US law.

In Ireland, the new Act came into effect during the summer of 2014. For the first time, it provides protection for all workers across both public and private 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’
- in one of the ways set out in the Act.

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

## 1. Worker

A protected disclosure must be made by a worker. Broadly, a worker is an individual who is or was:

- an employee;<sup>2</sup>
- a contractor;
- an agency worker; **or**
- a work experience student (pursuant to a training course) or trainee.<sup>3</sup>

2. 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.

3. Otherwise than under a contract of employment or by an educational establishment on a course provided by the establishment. See the definition of “worker” in section 3(1) of the Act for full details of who a ‘worker’ is. A copy of the Act can be accessed at <http://www.irishstatutebook.ie/2014/en/act/pub/0014/index.html> 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 below for further details

## 2. Relevant information

Relevant information is information which:

- comes to the attention of the worker in connection with their employment;
- and
- which the worker reasonably believes tends to show ‘relevant wrongdoing’.

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 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 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.<sup>4</sup>

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.<sup>5</sup> Reporting a grievance arising from your contract, such as a pay dispute, will not be a protected disclosure. We always suggest that you get advice to help you separate grievances from relevant information.

The Act sets out how reports of relevant information and wrongdoing should be made if they are to qualify as ‘protected disclosures’.

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4. See section 5 for definitions of “relevant information” and “relevant wrongdoing”.

5. See (b) above. It also does not cover (i) matters falling under an investigation function of the worker 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 be legal professional privilege could be maintained by the person who sought legal advice.



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

Also see the Types of Protected Disclosure diagrams on pages 31 to 34.

## a. First port of call

Generally speaking, the Act encourages a worker 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;
- or
- A responsible person – this applies where the worker reasonably believes that the relevant wrongdoing relates mainly to (i) the conduct of a person other than the employer or (ii) something for which someone other than the employer has legal responsibility for. In these circumstances, the relevant information can be disclosed to that person.

Where the worker is employed by a public body, a report of relevant information can also be made to an appropriate Government Minister.<sup>6</sup>

There is no legal requirement to make a first report to the above people and there are circumstances under which a report of relevant information can be made by a worker to someone else and still qualify as a ‘protected disclosure’ under the Act. However, there are additional hurdles to satisfy in these cases. Details are set out in this section.

It is therefore often easiest to report to an employer in the first instance. Another benefit of turning to your employer first is that they are often best placed to deal with wrongdoing within their own organisation. Prudent employers value learning about issues at an early stage and the opportunity to put them right.

## b. Prescribed persons

The Minister for Public Expenditure and Reform made an order in July 2014 which lists a number of ‘prescribed persons’. These include regulators such as the Data Protection Commissioner and the Comptroller and Auditor General.<sup>9</sup>

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<sup>6</sup> This is any Minister who has a statutory function in relation to the public body. See sections 6 and 8 of the Act for full details of disclosures to employers, responsible persons and Ministers. Public bodies are defined in section 3(1) of the Act.

A report of relevant information may be made a ‘prescribed person’ where the worker also reasonably believes that:

- The relevant wrongdoing falls within the prescribed person’s remit;<sup>10</sup> and
- The information (and any allegation contained within it) is substantially true.<sup>11</sup>

## 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 <sup>7</sup>
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 civil servant	The State, a Minister of the Government, a Department or a Scheduled Office in which you hold office <sup>8</sup>
A member of An Garda Síochána	The Commissioner of the Garda Síochána
A member of the Permanent Defence Force or the Reserve Defence Force	The Minister for Defence

7. 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.

8. 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.

### c. Others

If you are a worker who wishes to report relevant information in some other way, such as to a journalist, 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:

- (a) You reasonably believe that the relevant information and allegations are substantially true;
- (b) The disclosure is not made for personal gain;
- (c) One or more of the following conditions are met:
  - You reasonably believe that you will be penalised by your employer if you make your disclosure to your employer, a prescribed person or (if you work for a public body) a relevant Minister;<sup>12</sup>
  - (Where there is no prescribed person for the type of issue to be reported) you reasonably believe that it is likely that evidence will be concealed or destroyed if you make a report to your employer;<sup>13</sup>
  - You have previously made a disclosure of substantially the same information to your employer,<sup>14</sup> a prescribed person or (if you work for a public body) a relevant Minister; **or**
  - The relevant wrongdoing is exceptionally serious. There is no definition in the Act of what is exceptionally serious but there is an argument that serious crimes including corruption and fraud, as well as imminent threats to the health and safety of people, are grave enough;

and

- (d) The disclosure is reasonable in all the circumstances of the case. This will include taking into account factors such as who the disclosure is made to and (where there was a previous disclosure to your employer) any action taken by your employer.<sup>15</sup>

We always strongly advise that you seek professional advice before you do anything (and in particular before you go straight to someone like a journalist), to make sure that your circumstances meet the criteria summarised above. If you make a disclosure that is not protected under the Act, you will be putting yourself at risk of dangers such as disciplinary action, prosecution and civil proceedings.

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9. Prescribed persons are set out in the Protected Disclosures Act 2014 (Section 7(2)) Order 2014. A copy can be accessed online at <http://www.irishstatutebook.ie/2014/en/si/0339.html>.

10. Also set out in the above Order.

11. See section 7 of the Act for full details.

12. Or anyone else listed in the 'First port of call' section of this guide.

13. 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.

14. Or as set out in the last footnote

15. See section 10 of the Act for the full list of criteria in relation to making disclosures of relevant information to "others".

#### **d. 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 make your advisors aware of this and obtain tailored help before making a report. The following is provided by way of summary only and is not comprehensive.<sup>16</sup>

Do you wish to make a disclosure of relevant information that 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.

This type of relevant information should generally be reported to your employer or a prescribed person. Reports can also be made to the Comptroller and Auditor General or a member of the Dáil Éireann or Seanad Éireann in certain circumstances but a number of additional conditions must be satisfied. These include the requirements set out under the section entitled “Others” page 11.

Do you wish to disclose 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 a 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?

A disclosure of this type of relevant information will not be a protected disclosure unless reported to the worker’s employer or (if the worker is employed by a public body) a relevant Government Minister. A report of relevant information can be made to a new “Disclosures Recipient” where the requirements set out in the “Others” section above are satisfied.

#### **e. What if my concern relates to a trade secret?**

In 2018, the Government introduced an amendment to the Protected Disclosures Act 2014 under the EU Protection of Trade Secrets Regulation.

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<sup>16</sup>. See sections 17 and 18 of the Act for full details.

The regulation amends the Act to create a new test that requires a worker to show that they acted for the purposes of protecting the general public interest when disclosing undisclosed know-how and business information (trade secrets). This test can apply to workers even where the disclosure is true, relates to a criminal offence, or they reported to their employer or the appropriate authorities.

It also means that a worker's motivation may now be considered in certain circumstances. Prior to this amendment, section 5(7) of the Act made it clear that the motivation for making a disclosure was irrelevant. This is no longer the case where a worker acquires or uses a trade secret.

A trade secret can be defined as any information that is commercially valuable because it is secret and may comprise of information including commercial expertise, designs, processes, financial data, and customer lists. When disclosing such information, it is important that you can demonstrate that you acted for the purposes of protecting the general public interest.

It is also important to note that offences are created under this legislation which in certain circumstances could see workers face a €50,000 fine and/or imprisonment of up to three years for the unlawful use or acquisition of a trade secret. Before making a disclosure using a trade secret, we recommend you seek legal advice.

## 4. Summary

If you wish a report to be protected under the Act, you will need to make sure that you can answer yes to the following:

- Are you a worker?
- Did the information you wish to report come to your attention in connection with your employment?
- Do you genuinely believe that the information tends to show one or more relevant wrongdoings? Would another reasonable person (particularly one who has no 'axe to grind') agree with you?
- 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 your report qualifies as a protected disclosure under the Act, you will have the following protections.

# What protections will I have?

## 1. Will people know what I have done?

Workers 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 without giving their name.

The Act does not prohibit anonymous protected disclosures but also does not set out any specific provisions on these types of reports. What it does make clear, however, is that (where a worker's identity is known) employers and other recipients of protected disclosures must protect the identity of the worker making the protected disclosure. They are not allowed to reveal any identifying information unless an exception (as specified in the Act) applies. Exceptions include where the recipient of the disclosure reasonably believes that revealing the worker's identity is necessary to effectively investigate the reported concerns or that it is necessary in the public interest.<sup>17</sup>

‘employers and other recipients of protected disclosures must protect the identity of the worker making the protected disclosure’

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<sup>17</sup>. See section 16 of the Act for full details.

# 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 Protected Disclosures Act affords you what might be called a qualified right to confidentiality, there is no right to anonymity in the legislation.<sup>18</sup> This means that if your identity is subsequently revealed after making a protected disclosure, your name may be revealed to third parties 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 report, you will still have to show that it was you that made it if you are to claim any protection under the Act.
3. Thirdly, law enforcement agencies may not be obliged to act on a report that you make if you withhold your name. 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 may become known to others. You might 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 16 and that you get professional advice early.

18. The Act does not require the recipient of the disclosure to seek your permission to disclose your identity, so long as an exemption applies. See section 16 of the Act.

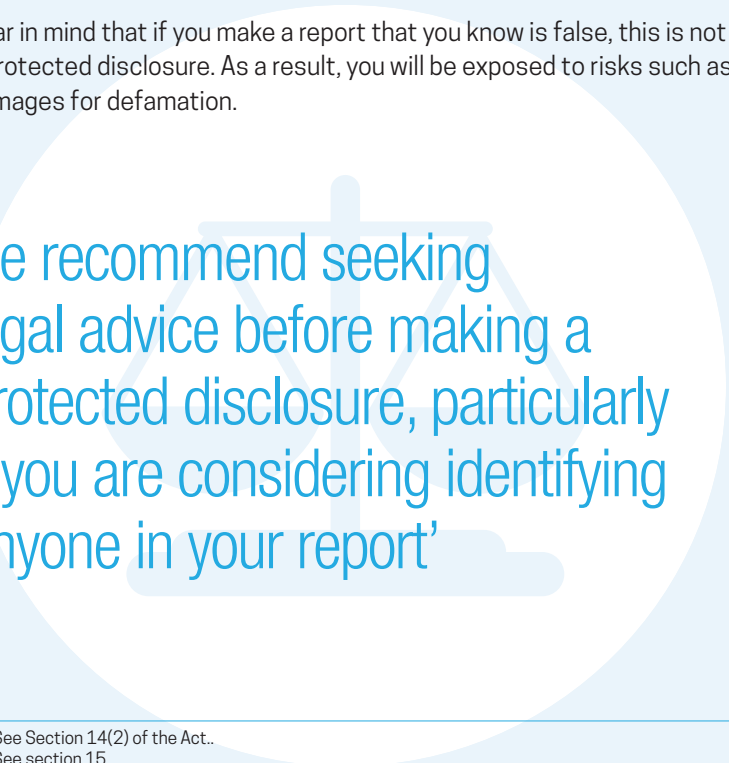
## 2. Will I face legal action for making a protected disclosure?

There is nothing in the law that stops anyone from taking defamation proceedings against a worker who makes a protected disclosure. However, when making a protected disclosure you will have a defence of ‘qualified privilege’ meaning that it should generally be difficult for anyone to win a case against you if you can show that you complied with the Act and didn’t act maliciously.<sup>19</sup> Nonetheless, we recommend seeking legal advice before making a protected disclosure, particularly if you are considering identifying anyone in your report.

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

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).<sup>20</sup>

Bear in mind that if you make a report that you know is false, this is not a protected disclosure. As a result, you will be exposed to risks such as damages for defamation.



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

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19. See Section 14(2) of the Act..

20. See section 15.



### 3. What if my employer treats me badly?

Most whistleblowers are not fired but it can happen. An employee who is dismissed for having made a protected disclosure can claim unfair dismissal – and potentially be awarded up to five years' remuneration.<sup>21</sup> 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 for making a protected disclosure from 'day one' of their employment. Additionally, employees who have been dismissed can seek interim relief pending final determination of the case.<sup>22</sup>

If your employer does not dismiss you but you are penalised in some other way – such as by being demoted or having your hours cut – you can complain to the Rights Commissioner and appeal to the Labour Court if necessary.<sup>23</sup> You should be aware that there is generally a time limit of 6 months for making a complaint to the Commissioner.

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

You don't need to have a contract of employment or even be a worker to enjoy protection under the Act. If you suffer a detriment – such as harassment or loss – as a result of a worker having made a protected disclosure, you have a right to sue for damages. It doesn't 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).

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21. This applies to employees rather than all workers. Employees are those who are or were employed under a contract of employment.

22. Section 11 of the Act deals with unfair dismissal.

23. Provided that you are an employee. See section 12 of the Act for more details.

# What should I expect when I report?

## 1. 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 in place and that you follow any such policy 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 responsible officer or you may be directed to a hotline. Employers that are public bodies have a legal duty to put whistleblowing procedures in place and to provide written information on them to their workers. Many other employers (who are not public bodies) have also chosen to do the same.

As mentioned earlier, a number of employers are encouraging workplace whistleblowing. Others may not thank you for raising a concern but an organisation that values honesty should have clear policies and procedures in place which allow you to:

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

You will also want to be assured that, when you report a concern, you will be protected from both formal and informal sanctions by your employer and/or colleagues. Formal sanctions include disciplinary hearings, dismissal, reductions in pay, 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 professional advice on the wording of the policy. It's 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.

## 2. What you should expect from 'prescribed persons'

Similarly, when reporting to a prescribed person, check their policies and procedures first. Good policies and procedures will:

1. Remind you that you can seek professional advice before and after you make a protected disclosure;
2. Give you a clear timeframe for an investigation; [and](#)
3. Ensure that you are provided with the name of the person receiving your report.

Remember that you shouldn't feel pressured into saying anything or sharing information until you feel it's safe to do so. We recommend seeking professional 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).

### 3. What you should expect when reporting to others

Journalists and TDs may be friendly, personable, supportive and listening; but generally their loyalty is to what they consider to be the public interest, not 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, be sure to tell them that your story is ‘off the record’. You should be aware that, if they can find enough information elsewhere to publish, and believe it’s in the public interest to publish, they might print the story anyway. Some journalists will encourage you to go on record or on camera. Again, remember that it’s not them doing it. They’re generally insured against defamation – and generally won’t be fired for telling your story unless it’s false.

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. And although they enjoy immunity against prosecution for anything they say in parliament, you may be exposed to legal action if they reveal your identity. Although all recipients of protected disclosures (including TDs) need to comply with

‘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’

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. We strongly recommend seeking professional advice before making such a disclosure. 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.

## 4. What you should expect when seeking advice

Even those you expect to be ‘right behind you’ – such as legal professionals – might sound unsupportive at first. This shouldn’t necessarily be taken as a sign that they don’t believe you. Your advisors are likely to ask hard questions, may interrupt you while you tell your story and may initially sound unsympathetic. 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 shouldn’t 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 might 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 of 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 report it may also be helpful to keep a diary or contemporaneous notes of relevant information, and keep this in a safe place. Whatever you do, do not send emails with sensitive information from your personal or work email (see point 6, page 26).

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, it is 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. Try to tell your story without any direct allegations against anyone in particular, if possible.

## 2. Seek professional advice early

Make sure that you seek 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, the rights you enjoy and the consequences of making a protected disclosure.<sup>24</sup>

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. This means that (in addition to applicable 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.

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. Your employer may also operate an internal helpline that allows you to seek professional advice before you make a disclosure.

If there is an imminent risk to the safety of children or serious harm to others, you could have a legal obligation to report to the relevant authorities as soon as possible.

24. 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.

## 3. Avoid gathering evidence

Your employer should take the lead in investigating your concern and you should avoid gathering evidence yourself. Although you will need to show that you have a 'reasonable belief' that wrongdoing was taking place, you may not need documentary evidence to have 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's unlikely to be hidden or destroyed – then it might be enough to direct others to that information. If, however, you think it's necessary to protect evidence then you should seek legal and technical advice before you copy, store or share such information with anyone else.

## 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. 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 of 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?

Working on and talking through your strategy with your advisors means that you are better prepared for any attack – legal or personal – that might 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 reprisal for reporting a concern. Some people may lose sleep or find it hard to eat. Many of our clients have found it difficult to go about their daily lives because of the pressure they feel from co-workers, management or regulators.

It's 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 who 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.

If you need help with finding support, feel free to call our Speak Up Helpline.

# 6. Communicate safely

## a. When reporting internally

Once you're 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 doing something dangerous. 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.

If you make a 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 probably won't go down well with your colleagues. These types of direct allegations should be avoided if possible.

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 obligations to protect your identity, as set out more fully on page 14. It would be good practice for your employer to notify you before disclosing your identity to anyone else (if possible).<sup>25</sup> It would be useful to seek this assurance in writing before you make your report.

### **Motivations**

Although your motivation for making a protected disclosure is largely irrelevant under the Act, it may come under scrutiny.<sup>26</sup> It is important that you can clearly explain that your primary reason for reporting a concern is to see wrongdoing investigated.

It should be noted that the Act was amended in 2018 which means that motivation will be considered where making a disclosure using trade secrets. See 'What if my concern relates to a trade secret?' on page 12.

## b. When reporting externally

It's very unlikely that anyone will have the interest, resources or technology to tap your phone or listen in to your conversations. However, there is no such thing as

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<sup>25</sup> They may also have a duty to do so under data protection legislation. However you should be aware that they may not, in practice, give you any advance notice.

<sup>26</sup> 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 'Will I face legal action for making a protected disclosure?' on page 16

100% safe and secure electronic communication. Calling from a registered mobile phone can easily reveal your identity. If you are prepared to call a journalist or the Gardaí with information that could compromise your safety, avoid calling from your work landline, mobile or home phone. Instead, consider calling using a pre-pay SIM card or public phone box. 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. You should also know that emails to or from your work account can be easily read by your employer and could be monitored. Instead, consider setting up an anonymous email address. It is also advised that you use an encrypted email account such as ProtonMail ([www.protonmail.com](http://www.protonmail.com)) to send more secure messages. Also note that your IP address (your computer's identity) can be traced by third parties. Using TOR ([www.torproject.org](http://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 ProtonMail from your work computer.



## A calm whistleblower is a more credible whistleblower

Don't 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 and land you in trouble (see 'Will I face legal action for making a protected disclosure?' 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, italics and exclamation marks too much in correspondence. Such devices can effectively SHOUT!!! at the reader.

Feel free to contact the Speak Up Helpline, 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 aren't sufficient grounds to address a risk you've 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 isn't 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 the relevant body. If you are still unsatisfied (and it's serious enough), you might consider reporting to someone beyond your employer or prescribed body. You should seek legal advice before you do so.

Bear in mind that if you don't 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 unlucky enough to be met with a negative reaction from your co-workers or employer, you should employ your strategy in dealing with retaliation. Examples of reprisal include disciplinary hearings, unfair performance appraisals, loss of duties, delegation of duties that you aren't qualified for or relocation to another business unit.

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 recommend that you consult your solicitor before you do so.

Your employer shouldn't just be your first port of call but your first source of support in dealing with retaliation from co-workers. It's in your employer's interests to make sure you are free to share information about wrongdoing without fear of reprisal. Report any harassment from co-workers as soon as you have taken a note of it.

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 a solicitor 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 a risk of wrongdoing, you may want to ask yourself whether it would be better to find a new job with an employer you feel safer working with.

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 without fear of reprisal. You should know that is also unlawful for a new employer to sanction you for having made a protected disclosure to your previous employer.

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 you can do to change the past. This may be the time for you to consider your strategy for getting on with the rest of your life.

# 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. Contact the Speak Up Helpline on Freephone 1800 844 866, or securely online at [www.speakup.ie](http://www.speakup.ie).

If you are based in the UK (including Northern Ireland), we suggest you contact Protect which operates a helpline offering free advice to whistleblowers. The helpline is open from 9am to 6pm, Monday to Friday. Contact 00 44 203 117 2520 or visit [www.protect-advice.org.uk/](http://www.protect-advice.org.uk/).

For links to TI helplines in different countries, log onto [www.transparency.org/reportcorruption](http://www.transparency.org/reportcorruption).

You can also find other whistleblowing support organisations worldwide at: [www.whistleblowingnetwork.org](http://www.whistleblowingnetwork.org).

## 2. For employers

If you are an employer, trade union representative or represent a regulator, you might be interested in TI Ireland's Integrity at Work (IAW) programme which provides training, tools and support to create a work environment where people feel safe in speaking up. More information can be found at [www.integrityatwork.ie](http://www.integrityatwork.ie).

## 3. Useful websites

- [www.protonmail.com](http://www.protonmail.com) – One of many free encrypted email tools available online
- <https://signal.org/> – For free encrypted text messaging and calls
- [www.torproject.org](http://www.torproject.org) – For more secure, anonymous online browsing

# Types of Protected Disclosures

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



**I am a worker in the private or non-profit sector**

**Type 1 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

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

**Type 2 Reporting to Prescribed Persons**

I have good reason to believe that the relevant information I have is substantially true

You can report to the appropriate regulator (known as the 'prescribed person')

**Type 3 Reporting to Others**

I have good reason to believe that the relevant information I have is substantially true

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I am not doing this for my own benefit

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I have good reason to believe that evidence will be covered up or I will be penalised if I report to my employer (see page 11 of this guide for other conditions/ scenarios)

You may have a right to report to the media, a TD or a civil society organisation, depending on whether this would be reasonable in all the circumstances of your case

This chart should be read with the Guide as a whole. It does not set out all of the requirements to comply with the law and is not legal advice. You can always discuss relevant information with your legal advisor.

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



### Type 1 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

You can also report to a Government Minister who has a statutory function in relation to the public body you work for

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

### Type 2 Reporting to Prescribed Persons

I have good reason to believe that the relevant information I have is substantially true

You can report to the appropriate regulator (known as the 'prescribed person')

### Type 3 Reporting to Others

I have good reason to believe that the relevant information I have is substantially true

I am not doing this for my own benefit


I have good reason to believe that evidence will be covered up or I will be penalised if I report to my employer (see page 11 of this guide for other conditions/ scenarios)

You may have a right to report to the media, a TD or a civil society organisation, depending on whether this would be reasonable in all the circumstances of your case

This chart should be read with the Guide as a whole. It does not set out all of the requirements to comply with the law and is not legal advice. You can always discuss relevant information with your legal advisor.



### 3. 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 (see page 12)**

**Type 1 Reporting Internally**  
I want to report this information

You can report directly to your employer

**Type 2 Reporting to Prescribed Persons**  
I have good reason to believe that the relevant information I have is substantially true

You can report to the appropriate regulator (known as the 'prescribed person')

**Type 3 Reporting to Others**  
I have good reason to believe that the relevant information I have is substantially true

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I am not doing this for my own benefit

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I have good reason to believe that evidence will be covered up or I will be penalised if I report to my employer (see page 11 of this guide for other conditions/ scenarios)

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I satisfy additional applicable criteria as discussed with my advisors

You may have a right to report taxpayer information to the Comptroller and Auditor General and other information to a TD/Senator, depending on whether this would be reasonable in all the circumstances of your case

This chart should be read with the Guide as a whole. It does not set out all of the requirements to comply with the law and is not legal advice. You can always discuss relevant information with your legal advisor.

# 4. 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)**

## Type 1 Reporting Internally

I want to report information

You can report directly to your employer

If you are public body worker, you can also report to a Government Minister who has a statutory function in relation to the public body you work for

## Type 2 Reporting to Disclosures Recipient

I have good reason to believe that the relevant information I have is substantially true  
I am not doing this for my own benefit

I have good reason to believe that evidence will be covered up or I will be penalised if I report to my employer (see page 11 of this guide for other conditions/scenarios)

You may have a right to report to the 'Disclosures Recipient', depending on whether this would be reasonable in all the circumstances of your case

This chart should be read with the Guide as a whole. It does not set out all of the requirements to comply with the law and is not legal advice. You can always discuss relevant information with your legal advisor.





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](http://www.speakup.ie)** for further details.