

Disclosures from whistleblowers

'Whistleblowing' is when a worker passes on information about wrongdoing they have witnessed or experienced (usually) at work.

If you are concerned that your employer (or ex-employer) may be contravening legislation relating to data protection or freedom of information, you may contact us. The Information Commissioner has the power to investigate related complaints.

If you are concerned that because of disclosing information to us, you may be penalised by your employer or dismissed from your job, the whistleblowing provisions of employment rights legislation may protect you.

Purpose

The purpose of this advice note is to:

- outline the protection that may be available if you feel able to disclose information to us, and
- describe how we handle disclosures from whistleblowers.

It doesn't give a full analysis of the whistleblowing provisions. We can only give general advice about how they work in practice and we can't say whether any disclosure you make will definitely be protected. You can, however, contact the independent charity Public Concern at Work on 0207 404 6609 for confidential advice about whether, and how, to raise a concern about potential wrongdoing. You should also think about getting independent legal advice.

What do the whistleblowing provisions do?

The whistleblowing provisions protect any 'worker' who makes a 'protected disclosure' of information, from being dismissed or penalised by their employer because of the disclosure.

'Worker' has a broad definition and applies to anyone who works (or worked) under a contract in the UK. It extends to include home workers, casual workers, temporary or agency workers, people who work via personal service companies and people involved in training programmes or work experience. It doesn't, however, generally apply to the self-employed or to Crown servants involved in national security.

For a disclosure to be protected, it must be made to an appropriate recipient, including the Information Commissioner. It must also conform to one of five criteria. The criteria most relevant to our work are where the worker reasonably believes an activity shows:

- the commission (or likely future commission) of a criminal offence, or
- a breach (or likely future breach) of a legal obligation,

where this has been (or is likely to be) deliberately concealed.

A disclosure will not qualify if a worker commits an offence by making it, or if the information is subject to legal professional privilege (or a claim to confidentiality between a client and professional legal adviser in Scotland.)

Disclosures to the ICO

If you believe that an act or omission by your employer amounts to a contravention of the legislation we are responsible for (for more information about this please see the [what we do](#) section of our website), you can tell us about it.

There is, however, a difference between:

- a worker making a protected disclosure under the whistleblowing provisions, and
- an individual contacting us in their personal capacity because they think their employer has contravened legislation with regard to them personally, and want us to help put things right for them.

Disclosures made under the whistleblowing provisions

For the whistleblowing provisions to apply, you must reasonably believe that the information you're giving us is true and you must act in good faith.

You should seek to make disclosures in accordance with your employer's whistleblowing policy, if they have one. However, you don't have to tell them that you intend to make a disclosure. In addition, any condition in an agreement between you and your employer has no legal effect if it tries to stop a protected disclosure.

We will treat the information you provide as confidential and won't disclose it without lawful authority. Having said this, to look into a matter properly, we will usually need to disclose some information to the organisation concerned. We can discuss this with you, but you should clearly indicate any information that you don't want us to share from the outset.

You can contact us anonymously if you prefer but we are more likely to be able to investigate potential wrongdoing where we are confident that the party making the disclosure is in a position to make an informed complaint. It will also mean we are better able to feedback information about any action we have taken, if we are in a position to do so.

If, having looked into the matter, we believe we have an opportunity to improve your employer's information rights practices, there is a range of regulatory action we can take, from recommending changes to policies and procedures to taking formal enforcement action. For more information about our regulatory powers, please see the regulatory action policies on the [policies and procedures](#) section of our website.

Where possible, we will give you feedback about any action we take as a result of your disclosure. However, this feedback will be restricted. We also have a duty of confidence to the organisations we regulate and we are legally prevented from sharing much of the information we hold about them.

We will also publish information about the action we take as a result of disclosures made by whistleblowers in a yearly report. This won't, however, contain any information which will identify individual whistleblowers or their employers (including ex-employers).

To raise a matter under the whistleblowing provisions, please call our helpline, selecting the option for whistleblowing complaints. Your call will be routed to officers familiar with the whistleblowing provisions and our whistleblowing case handling procedures. Please make clear to the person you speak to that you consider yourself to be making a protected disclosure under the whistleblowing provisions.

Alternatively, you can contact us in writing. Again, we will direct your correspondence to an officer that is familiar with the whistleblowing provisions and our related case handling procedures, and again you should make clear that you consider yourself to be making a protected disclosure under the whistleblowing provisions.

All of our contact details are on the [contact us](#) section of our website.

Disclosures made outside of the whistleblowing provisions

If you have a personal complaint about your employer, such as they haven't processed your personal data in compliance with data protection legislation or they haven't properly responded to a freedom of information request you've made, you don't have to report it under the whistleblowing provisions. We regularly deal with such employee/employer complaints under our routine case handling processes.

If you are unable to resolve the matter directly with your employer (and the [raising a concern with an organisation](#) section of our website may help you with this), you can ask us to look into your complaint under our general processes, through the [report a concern](#) section of our website.

In these cases, we will usually disclose your name and the details of your complaint to your employer (although we should still be able to withhold non-essential information if you request it) and the protection of the whistleblowing provisions won't apply. We still, however, have the range of powers available to us as described above and in some cases, we can help your employer take action to put things right for you.

More information

You can find the full text of the of the whistleblowing provisions of the [Public Interest Disclosure Act 1998](#) and the [Public Interest Disclosure \(Northern Ireland\) Order 1998](#) on the legislation.gov.uk website.