



Department for
Business, Energy
& Industrial Strategy

WHISTLEBLOWING

Prescribed persons guidance

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This document is guidance for the organisations and individuals who are Prescribed Persons, to help them understand their role as a prescribed person. It provides advice on complying with legal requirements as well as practices beyond the whistleblowing legislation.

Organisations and individuals that are listed in The Public Interest Disclosure (Prescribed Persons) Order 2014¹ (“Prescribed Persons Order 2014”) are referred to as prescribed persons.

Prescribed Persons have a role in the whistleblowing process. This role is influenced by the statutory functions specific to each body.

Who is a prescribed person?

The Prescribed Persons Order 2014 sets out a list of over 60 organisations and individuals that a worker may approach outside their workplace to report suspected or known wrongdoing. The organisations and individuals on the list have usually been designated as prescribed persons because they have an authoritative or oversight relationship with their sector, often as a regulatory body. An up-to-date list can be found here: www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies-2/whistleblowing-list-of-prescribed-people-and-bodies.

What is whistleblowing?

Whistleblowing is the term used when a worker passes on information concerning wrongdoing. In this guidance, we call that “making a disclosure” or “blowing the whistle”. The wrongdoing will typically (although not necessarily) be something they have witnessed at work.

To be covered by whistleblowing law, the disclosure must be a ‘qualifying disclosure’. This is any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show that one or more of the following has occurred, is occurring or is likely to occur:

- A criminal offence (this may include, for example, types of financial impropriety such as fraud);
- a breach of a legal obligation;
- a miscarriage of justice;
- danger to the health or safety of any individual;
- damage to the environment; or
- the deliberate covering up of wrongdoing in the above categories.

¹ S.I. 2014/2418

How is the qualifying disclosure protected?

For a qualifying disclosure to be protected, it must be made by a worker by one of the following permitted methods of disclosure:

- disclosure to the employer or other person responsible for the matter;
- disclosure to a Minister of the Crown, in relation to certain public bodies;
- disclosure to a Prescribed Person designated for the purpose by the order and for the purpose of seeking legal advice;
- Other disclosures may be protected where in the particular circumstances they are reasonable; or
- Special provision is made for disclosures relating to exceptionally serious problems.

Whistleblowing law is located in the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998).

A worker who blows the whistle, by making a disclosure in accordance with the criteria set out in '[What is whistleblowing?](#)' and '[How is the qualifying disclosure protected?](#)' sections above, is making a "protected disclosure" and has the right not to be unfairly dismissed or suffer a detriment (e.g. being dismissed or being denied a promotion) as a result of having made that disclosure.

A "worker" is defined by section 230(3) of the Employment Rights Act 1996 as: "an individual who has entered into or works under (or, where the employment has ceased, worked under) -

- a. a contract of employment; or
- b. any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual."

However, in relation to whistleblowing protections, the definition of a worker is extended to:

- agency workers and individuals supplied via an intermediary;
- non-employees undergoing training or work experience as part of a training course, otherwise than at an educational establishment;
- self-employed doctors, dentists, ophthalmologists and pharmacists in the NHS;
- Police officers;
- Student nurses and student midwives.

What is the role of a prescribed person?

The role of a prescribed person is to provide workers with a mechanism to make their public interest disclosure to an independent body where the worker does not feel able to disclose directly to their employer and the body might be in a position to take some form of further action on the disclosure. A worker will potentially qualify for the same employment rights as if they had made a disclosure to their employer if they report to a prescribed person. In order to qualify for these rights, as well as meeting the criteria set out in sections '[What is whistleblowing?](#)' and '[How is the qualifying disclosure protected?](#)', the worker must have a reasonable belief that:

- the matter falls within the remit of the prescribed person, as described in the second column of the Schedule to the Prescribed Persons Order headed "Description of matters" which can be found here: www.legislation.gov.uk/ukxi/2014/2418/schedule/made
- the information disclosed is substantially true.

The legal term for meeting these criteria' is referred to as making a "protected disclosure". If a protected disclosure is made, the worker may have a right to redress through the employment tribunal should they suffer a detriment or be dismissed from work as a result of making that disclosure.

When a whistleblower makes a disclosure to a prescribed person they escalate the issue beyond their employer, as those with investigatory and regulatory functions can consider acting upon the information that has been disclosed to them. In particular, whistleblowers can provide an important source of information to prescribed persons, which will enable prescribed persons to gain a greater understanding of the sectors they regulate/oversee.

Beyond the role of the prescribed person

A prescribed person needs to decide, and clearly communicate, whether they limit their role to the receipt of protected disclosures only, or are accepting of a wider range of non-protected disclosures, for example in relation to information about proceeds of crime or corruption. This will depend on the prescribed person's other statutory functions beyond the whistleblowing legislation which only applies to the employment rights of workers. If they have a wider role, they may wish to ask those disclosing what function their disclosure relates to.

The prescribed person is not responsible for deciding whether the individual who has made the disclosure qualifies for protection. Ultimately this will be decided by the Employment Tribunal where a claim of detriment or dismissal because of whistleblowing is contested.

The prescribed person is unable to become involved in a grievance between workers and employers, other than to confirm that a disclosure was made.

What happens once a disclosure has been reported to a prescribed person?

It can be a difficult decision for a whistleblower to make a disclosure, and the prescribed person should be sensitive to this. The prescribed person will manage the initial contact with the whistleblower to clarify and understand the nature of their disclosure and then take a decision about what action they will take.

All disclosures should be dealt with on a case-by-case basis and to a defined and published set of policies and procedures, ensuring a consistent approach. The policies and procedures will ensure that staff within prescribed bodies who deal with disclosures are confident in responding to whistleblowers and their concerns in a confidential manner.

Taking action²

In so far as their statutory functions beyond the whistleblowing legislation permit, prescribed persons can look into a disclosure and recommend how an employer could rectify the problems it finds, either in relation to the employer's whistleblowing policies and procedures or in relation to the issues which form the substance of the whistleblowing disclosure. Some prescribed persons may be able to take enforcement action should they find evidence of wrongdoing in relation to their statutory powers.

Provide feedback

Feedback to the whistleblower is important where possible. A policy should set out that commitment and any restrictions there may be for providing feedback to the whistleblower, usually because of the need to protect the confidentiality of the parties involved. Prescribed persons could sign post other information and advice at this point.

² 'Action' can encompass anything that includes further work beyond the initial contact. This may vary from one follow-up call with the whistleblower to seek further clarity, right through to a large piece of work investigating the organisation that has been reported.

Managing the whistleblower's expectations

It is important for prescribed persons to realise that they will often be hearing from anxious and distressed individuals. The two main barriers whistleblowers face are a fear of reprisal as a result of making a disclosure and the perception that no action will be taken if they do make the decision to 'blow the whistle'. The following guidance may help to alleviate whistleblowers' concerns and to build trust and confidence.

Clear policies and procedures

It is good practice for the prescribed person to publish information on the processes followed for disclosures made to them, how they investigate and how information provided by whistleblowers is used. By making its policy accessible online the prescribed person should increase the public's confidence through greater transparency about how disclosures are handled. A good example of this can be found on the Financial Conduct Authority's website here: www.fca.org.uk/your-fca/documents/how-we-handle-disclosures-from-whistleblowers.

It is also important for whistleblowers to have access to the right contact details (both phone and email) so they can easily approach the relevant prescribed person.

Setting realistic expectations

A clear explanation of the statutory powers and remit of the prescribed person will give the whistleblower a more realistic expectation and they will be less likely to feel that their disclosure has been ignored.

Confidentiality

It should be made clear to the whistleblower what can and cannot be promised with regards to confidentiality, including that confidentiality can work both ways so that the Prescribed Person may not be able to advise the whistleblower about details of the action taken.

Anonymity

In some circumstances individuals may not wish to provide their details. Prescribed Persons should accept completely anonymous reports. It would be good practice for the Prescribed Person to make it clear to the whistleblower that anonymity may make it more difficult for the individual to receive legal protections. This is because there would likely be no evidence to link any detriment they may suffer to the disclosure of information to the Prescribed Person.

Provide feedback

Where possible any feedback provided to the whistleblower will help to improve their confidence that the disclosure has been taken seriously and could prevent the whistleblower from feeling discouraged by their experience. However, in many cases only limited feedback will be possible. If this is the case, the whistleblower should be informed of the reason(s) for this.

Can a prescribed person recommend improvements on how the organisations they oversee deal with whistleblowing?

Whistleblowers will often contact prescribed persons rather than their employer if they feel unable to make a disclosure to their employer or if they feel that no action has been or will be taken. In so far as their statutory functions beyond the whistleblowing legislation permit, prescribed persons can encourage organisations they oversee to have whistleblowing policies in place and assist in ensuring the arrangements are effective.

One way to do this is to lead by example to ensure they have whistleblowing arrangements for their own staff that meet best practice.

A further way is to emphasise to employers the benefits of an open whistleblowing culture; for example, having a whistleblowing policy makes it more likely that concerns will be raised internally, which reduces the likelihood of escalation to a prescribed person who may be their regulator, Member of Parliament or even to the press. Further guidance for employers can be found here: www.gov.uk/government/publications/whistleblowing-guidance-and-code-of-practice-for-employers.

Why are prescribed persons required to make annual reports on whistleblowing disclosures?

The Small Business, Enterprise and Employment Act created a power for the Secretary of State to require “Prescribed Persons” to produce an annual report on whistleblowing disclosures made to them by workers.

The aim of this duty is to increase transparency in the way that whistleblowing disclosures are dealt with and to raise confidence among whistleblowers that their disclosures are taken seriously. Producing reports highlighting the number of qualifying disclosures received and how they were taken forward will go some way to assure individuals who blow the whistle that action is taken in respect of their disclosures.

What is the duty?

Prescribed Persons are required to report in writing annually on whistleblowing disclosures made to them as a prescribed person. Auditors appointed to audit the accounts of small authorities are exempt from this requirement, as are MPs and Ministers of the Crown.

What is the reporting period?

The reporting period runs from 1 April to 31 March each year with the first reporting period beginning on 1 April 2017.

For auditors appointed to audit the accounts of large authorities the reporting period begins on 1 April 2018.

Where will the report be published?

The relevant prescribed person must publish the report:

- By placing the report on its website, or
- Wherever the relevant prescribed person considers appropriate for bringing the report to the attention of the public, such as their webpage.

Should the report be contained within existing annual reports of a Prescribed Body or can it be a standalone report?

The published report may be included in another report published by the prescribed person, which could be an annual report. The prescribed person may also publish a standalone report.

What will the report cover?

The report should cover the following:

- The number of disclosures of information made by workers to the relevant prescribed person in a twelve month period. The prescribed person must reasonably believe the disclosure of information is a qualifying disclosure.
- Out of the total number of qualifying disclosures made, the number of those disclosures where the prescribed person decided to take further action in that period (whether or not that action was actually undertaken within that period).
- An explanation of the prescribed person's functions, objectives and statutory powers (if it has any).
- A summary of the type of action taken by the prescribed person in respect of qualifying disclosures of information.
- A summary of how the information disclosed has impacted on the prescribed person's ability to perform its functions and meet its objectives. For example, if an objective of the body is to improve services it may be possible to say that the disclosures they have received have led to an improvement in services in their sector (provided doing so would not identify the whistleblower or the subject of the whistleblowing).

Reporting on further action taken

Prescribed Persons are required to report on the number of disclosures where they decided to take further action. This could include information such as:

- The number of disclosures that were referred to an alternative body.
- The number of disclosures that required further investigation.
- The number of investigations that led to action being taken.
- The number of disclosures where they have made recommendations to employers on how they could rectify the problems it finds, either in relation to the employer's whistleblowing policies and procedures or in relation to the issues which form the substance of the whistleblowing disclosure.
- The number of organisations investigated that had whistleblowing policies in place.
- The number of enforcement actions taken where they have found evidence of wrongdoing.

A summary of the action taken

Prescribed Persons are required to include in their reports a summary, on general terms, of the action taken in respect of qualifying disclosures. This could include information such as:

- A summary of the number of cases where the issue was resolved after first contact with the employer.
- Where disclosures that required further investigation, a summary of the investigations carried out and the outcomes.
- Where enforcement actions were taken as a result of disclosures, what the outcomes were.

However, case specific information which could lead to identification of a whistleblower or the subject of the whistleblowing or compromise confidentiality of an ongoing investigation should not be included (see further below "Protecting the Confidentiality of Whistleblowers"). The purpose of this report is for prescribed persons to demonstrate that every disclosure they receive from a worker is given reasonable consideration and they are dealt with on a case-by-case basis and to a defined set of policies and procedures, ensuring a consistent approach.

Protecting the confidentiality of whistleblowers

In order to protect the confidentiality of whistleblowers and other parties involved, prescribed persons should not include any information in the report that would enable a worker who has made the disclosure or the employer or person about whom a disclosure has been made to be identified.

Should this information be reported to Parliament?

Prescribed Bodies are required to publish their reports online or in such other manner as the relevant prescribed person considers appropriate for bringing the report to the attention of the public. The Department for Business, Energy and Industrial Strategy also intends to collate Prescribed Persons' reports and arrange for them to be laid before Parliament.

Further information

For further information on whistleblowing you can access:

- [The government's guidance to employers and whistleblowers](#)
- [The government's Code of Practice for employers](#)
- [The PCaW Code of Practice](#)
- [The PCaW website](#)
- [Acas guidance on whistleblowing](#)



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