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Department for  
**Employment  
and Learning**  
[www.delni.gov.uk](http://www.delni.gov.uk)

Guide to the

# Public Interest Disclosure

(Northern Ireland) Order 1998

(Amended January 2011)



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## **Introduction**

This is a short guide to the Public Interest Disclosure (Northern Ireland) Order 1998, (the Order) which protects workers who 'blow the whistle' about wrongdoing. The Order amends the Employment Rights (Northern Ireland) Order 1996, and makes provision about the kinds of disclosures which may be protected; the circumstances in which such disclosures are protected; and the persons who may be protected.

In general, workers should be able to make disclosures about wrongdoing to their employer, so that problems can be identified and resolved quickly within organisations. Many employers have internal procedures which can be used or adopted for the purpose of facilitating disclosures.

The guide is intended to give general guidance only and should not be regarded as a complete or authoritative statement of the law. Readers should be aware of the possibility of developments in case law that might affect the rights described.

The contents of this guidance apply equally to men and women. For simplicity, however, the masculine pronoun is used throughout.

### **Persons who may be protected against unfair dismissal or being subjected to detriment**

The provisions introduced by the Order protect most workers from being subjected to a detriment by their employer. Detriment is not defined but may take a number of forms, such as denial of promotion, facilities or training opportunities which the employer would otherwise have offered. Employees who are protected by the provisions may make a claim for unfair dismissal if they are dismissed for making a protected disclosure. Workers who are not employees may not claim unfair dismissal; however, if the employer has terminated their contract because they made a protected disclosure, they may instead make a complaint that they have been subjected to a detriment.

Subject to some limited exceptions, the provisions protect persons who work under contracts of employment; those who work personally for someone else (under a "worker's" contract) but are not genuinely self-employed; home workers; certain agency workers; National Health Service practitioners such as GPs, certain dentists, pharmacists and opticians; and certain categories of trainees.

## **What can be disclosed?**

### **Qualifying disclosures**

Certain kinds of disclosures qualify for protection (“qualifying disclosures”). Qualifying disclosures are disclosures of information which the worker reasonably believes tend to show that one or more of the following matters is either happening now, took place in the past, or is likely to happen in the future:

- a criminal offence;
- a breach of a legal obligation;
- a miscarriage of justice;
- a danger to the health or safety of any individual;
- damage to the environment; or
- deliberate covering up of information tending to show any of the above five matters.

It should be noted that in making a disclosure the worker must have reasonable belief that the information disclosed tends to show one or more of the offences or breaches listed above ("a relevant failure"). The belief need not be correct - it might be discovered subsequently that the worker was in fact wrong - but the worker must show that he held the belief, and that it was a reasonable belief in the circumstances at the time of disclosure.

### **Disclosures about wrongdoing in the United Kingdom or overseas**

Protection under the provisions applies even if the qualifying disclosure concerns a relevant failure which took place overseas, or where the law applying to the relevant failure was not that of the United Kingdom.

### **Disclosures that involve an offence**

Disclosure of information by a worker is not a qualifying disclosure if in making it he commits an offence (e.g. if disclosure was prohibited under the Official Secrets Act 1989).

### **Disclosures and legal professional privilege**

A disclosure of information, which would be protected from disclosure because of legal professional privilege, cannot be a qualifying disclosure if made by the legal adviser (or, say, a typist in the adviser's office) to whom the information was disclosed in the course of obtaining legal advice.

## **Circumstances in which disclosures are protected (“a protected disclosure”)**

### **Making a qualifying disclosure to the employer or via internal procedures**

A qualifying disclosure will be a protected disclosure where it is made:

*(a) to the worker’s employer, either directly to the employer or by procedures authorised by the employer for that purpose; or*

*(b) to another person whom the worker reasonably believes to be solely or mainly responsible for the relevant failure.*

The only additional requirement on the worker is that he should act in good faith. No other requirement is necessary to qualify for protection.

Disclosure to the employer will in most cases ensure that concerns are dealt with quickly and by the person who is well placed to resolve the problem. In some small companies, this may be the employer himself, but an authorised procedure will be helpful. An existing company procedure may suffice, or such procedures could perhaps be adapted, for example to facilitate confidential disclosures by workers. Internal procedures that are simple to use, readily accessible and which workers are encouraged to use are more likely to result in disclosure of concerns to the employer first, rather than externally. Employers will wish to consider the best way to secure trust and confidence in such procedures to ensure that they will be used, perhaps by involving the workforce, or their representatives.

### **Making a qualifying disclosure to a prescribed person**

Workers who are concerned about wrongdoing or failures can make disclosures to a person or body which has been prescribed by the Public Interest Disclosure (Prescribed Persons) Order (Northern Ireland) 1999 for the purpose of receiving disclosures about the matters concerned. If a worker makes a qualifying disclosure to such persons or bodies, it will be a protected disclosure provided the worker:-

- makes the disclosure in *good faith*;
- reasonably believes that the information, and any allegation it contains is *substantially true*; and
- reasonably believes that the matter falls within the description of *matters for which the person or body has been prescribed* (e.g. breaches of health and safety regulations can be brought to the attention of the Health and Safety Executive).

A list of prescribed bodies, the description of matters for which they are prescribed and contact details are shown in [Appendix 1](#). The persons and

bodies listed have statutory functions and can provide authoritative advice and guidance to workers about matters properly disclosed to them.

### **Making a qualifying disclosure to a legal adviser**

A qualifying disclosure will be a protected disclosure if it is made to a legal adviser in the course of obtaining legal advice. There are no further conditions attached.

### **Making a qualifying disclosure to a Minister**

A qualifying disclosure made in good faith by a worker, employed in a Government-appointed organisation, such as a non-departmental public body, will be a protected disclosure if made to a Government Minister (either directly or via departmental officials).

### **Making a qualifying disclosure about an exceptionally serious failure**

A qualifying disclosure made about a relevant failure which is exceptionally serious will be a protected disclosure if the worker:-

- makes the disclosure in *good faith*;
- reasonably believes that the information disclosed, and any allegation contained in it, is **substantially true**; and
- does **not** *act for personal gain*;

Also, it must be reasonable for the worker to make the disclosure in view of all the circumstances, having regard in particular to the *identity of the person to whom the disclosure is made*.

Note that the relevant failure must be *exceptionally serious*. (This will be a matter of fact, and not simply a matter of the worker reasonably believing it to be exceptionally serious.)

### **Making a qualifying disclosure more generally**

A qualifying disclosure will be a protected disclosure if the following conditions are met:

Firstly, the worker must: -

- make the disclosure in *good faith*;
- reasonably believe that the information, and any allegation contained in it, is **substantially true**; and
- **not** *act for personal gain*.

In addition, one or more of the following conditions must be met:

- the worker reasonably believed that he would be *subjected to a detriment* by his employer if disclosure were to be made to the employer or to a prescribed person;
- in the absence of an appropriate prescribed body, the worker reasonably believed that disclosure to the employer would result in the *destruction or concealment of information* about wrongdoing;
- the worker had *previously disclosed* substantially the same information to his employer or to a prescribed person.

Finally, it must be reasonable for the worker to make the disclosure. The industrial tribunal will decide whether the worker acted reasonably, in all the circumstances, but in particular will take into account:

- *the identity of the person to whom the disclosure was made* (e.g. it may be more appropriate to disclose to a professional body that has responsibility for standards and conduct in a particular field, such as accountancy or medicine, than to the media);
- the *seriousness* of the relevant failure;
- whether the relevant failure *is continuing or is likely to occur again*;
- whether the disclosure breaches the *employer's duty of confidentiality* to others (e.g. information that is made available by the worker may contain confidential details about a client);
- *what action has or might reasonably be expected to have been taken* if a disclosure was made previously to the employer or a prescribed person; and
- whether the worker complied with any *internal procedures* approved by the employer if a disclosure was made previously to the employer.

### **Disclosures about health and safety matters**

The Employment Rights (Northern Ireland) Order 1996 already provides protection for employees who, in certain circumstances, raise concerns about, or take action in connection with, health and safety matters (see Articles 68, 68A and 132 of that Order). For example, the 1996 Order already provides that it is unfair to dismiss an employee who acts to protect himself or others from serious and imminent danger.

The provisions provide protection, as explained above, to any worker who discloses information about a health or safety danger in accordance with the provisions. Clearly, where there is a recognised health and safety representative present, the worker should normally tell him about the problem, as it is part of the representative's role to raise such matters with the employer. The existing health and safety provisions in the Employment Rights

(Northern Ireland) Order 1996, and the provisions introduced by the Order are therefore complementary.

## **Contractual duties of confidentiality**

Any provision in an agreement between a worker and his employer which would prevent the worker from making disclosures protected by the provisions is void. This applies to any agreement between the employer and worker (it might be a term in a contract of employment or a separate agreement) including agreements settling claims under the provisions.

## **Legislation for resolving disputes in the workplace**

Employers and employees (the legislation does not apply to 'workers') have been required to follow a minimum three-stage process to ensure that disputes are discussed at work. The minimum procedures create a framework for dealing with disciplinary action, dismissal and grievance issues, but do not replace established effective procedures. Where an employer or employee is found not to have fully complied with these procedures, industrial tribunals can impose financial penalties.

Detailed guidance, including information about when the procedures do not apply or are treated as having been complied with, is available on the Department for Employment and Learning website at:

[www.delni.gov.uk/resolvingdisputes](http://www.delni.gov.uk/resolvingdisputes).

The Department recently undertook a review of systems for resolving disputes and is currently preparing changes which it is anticipated will be introduced in April 2011.

Further advice on this matter is available from the [Labour Relations Agency](#) See [Appendix 2](#).

The legislation introducing the procedures differentiates between grievances and protected disclosures. Employees do not have to raise a grievance in order to make a protected disclosure.

The statutory minimum grievance procedures apply to a protected disclosure only if the employee actually intends that the disclosure constitutes raising the matter with his employer as a grievance.

## **Industrial tribunals and remedies**

Workers protected by the provisions (including employees) can complain that they have been subjected to detriment by their employer for making a protected disclosure. As noted earlier, an 'employee' can make a claim of unfair dismissal; a 'worker' who is not an employee and whose contract has been terminated by his employer because he made a protected disclosure can claim that he has been subjected to a detriment.

As with many other claims to industrial tribunals, the complaint should normally be made within three months of the dismissal or detriment. However, with the introduction of statutory disciplinary, dismissal and grievance procedures (see [legislation for resolving disputes in the workplace](#), page 6) the time limit has been extended, for claims made by employees, in specified circumstances connected with those procedures. The tribunal can also consider a complaint made outside the three-month time limit (either by an employee or by a 'worker') if they believe it was not reasonably practicable for the employee to have made a complaint within it and that it has been made within such further period as they consider reasonable.

For unfair dismissal claims, interim relief is also available, provided the claim is made within seven days of the effective date of the termination of employment.

Where a tribunal finds that a complaint of unfair dismissal is justified, it will order re-instatement or re-employment, or the payment of compensation. Where a worker complains that he has been subjected to a detriment and the tribunal finds the complaint well-founded, it will make a declaration to that effect and may order the payment of compensation.

## **List of Prescribed Persons**

The persons prescribed by the Department for Employment and Learning to whom disclosures of information may be made under the Public Interest Disclosure (Northern Ireland) Order 1998, and the description of matters in respect of which they are prescribed, are shown in [Appendix 1](#).

The list of Prescribed Persons has been amended in line with the Public Interest Disclosure (Prescribed Persons) (Amendment) Order (Northern Ireland) 2010<sup>1</sup>, which came into operation on 29 November 2010, and the Public Interest Disclosure (Prescribed Persons) (Amendment No.2) Order (Northern Ireland) 2010<sup>2</sup>, which came into operation on 16 January 2011.

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<sup>1</sup> S.R. 2010 No. 361

<sup>2</sup> S.R. 2010 No. 399

## Appendix 1

### List of Prescribed Persons and description of matters in respect of which they are prescribed (as of 16 January 2011):

#### ***Certification Officer for Northern Ireland***

Certification Office  
10-12 Gordon Street  
BELFAST  
BT1 2LG  
Telephone 028 9023 7773

Fraud, and other irregularities, relating to the financial affairs of trade unions and employers' associations.

#### ***Civil Aviation Authority***

Secretary and Legal Adviser  
CAA House  
45-59 Kingsway  
LONDON  
WC2B 6TE  
Telephone 020 7379 7311

Compliance with the requirements of civil aviation legislation, including aviation safety.

#### ***Comptroller and Auditor General for Northern Ireland***

Northern Ireland Audit Office  
106 University Street  
BELFAST  
BT7 1EU  
Telephone 028 9025 1023

The proper conduct of public business, value for money, fraud and corruption in relation to the provision of centrally funded public services and health service bodies.

#### ***Criminal Cases Review Commission***

Alpha Tower  
Suffolk Street  
Queensway  
BIRMINGHAM  
B1 1TT  
Telephone 0121 633 1800

Investigation of alleged or suspected miscarriages of justice from the criminal courts of England, Wales and Northern Ireland and from the Military Court and Service Civilian Court, and where appropriate, referral of cases to the relevant appeal court.

#### ***Department of Agriculture and Rural Development***

Dundonald House  
Upper Newtownards Road  
BELFAST  
BT4 3SB  
Telephone 028 9052 4999

Acts or omissions which have an actual or potential effect on the flows in watercourses or on drainage of land.  
Acts or omissions which have an adverse or potentially adverse effect on fish in the sea and fish health.

***Department of Culture, Arts and Leisure***

Inland Fisheries  
Causeway Exchange  
Bedford Street  
BELFAST  
BT2 7EG  
Telephone 028 9025 8825

Acts or omissions which have an adverse or potentially adverse effect on inland fisheries or on migratory salmon or trout.

***Department of Enterprise, Trade and Investment***

Netherleigh  
Massey Avenue  
BELFAST  
BT4 2JP  
Telephone 028 9052 9900

Fraud and other misconduct in relation to companies. Compliance with the requirements of consumer protection and fair trading legislation.

***Department of the Environment***

Director of Corporate Services  
Clarence Court  
10-18 Adelaide Street  
BELFAST  
BT2 8GB  
Telephone 028 9054 0540

Acts or omissions which have an actual or potential effect on the environment or the management or regulation of the environment including those relating to pollution.

***Department for Social Development***

Level 2  
The Lighthouse Building  
Gasworks Business Park  
Ormeau Road  
BELFAST  
BT7 2JB  
Telephone 028 9081 9300

The registration and operation of registered social landlords, including their administration of public and private funds and management of their housing stock. Fraud and other misconduct in relation to the administration and payment of Urban Regeneration and Community Development grants.

***Director of the Serious Fraud Office***

Elm House  
10-16 Elm Street  
LONDON  
WC1X 0BJ  
Telephone 020 7239 7272

Serious or complex fraud and corruption.

***The Financial Reporting Council Limited and its operating bodies: the Professional Oversight Board; the Financial Reporting Review Panel; and the Accountancy and Actuarial Discipline Board***

5<sup>th</sup> Floor  
Aldwych House  
71-91 Aldwych  
LONDON  
WC2B 4HN  
Telephone 020 7492 2395

Matters relating to–

- (a) the independent oversight of the regulation of the accountancy, auditing and actuarial professions;
- (b) the independent supervision of Auditors General (as defined in section 1226 of the Companies Act 2006);
- (c) the monitoring of major audits (as defined in section 525 of that Act for the purposes of that section or section 522, or paragraph 13(10) of Schedule 10 to that Act for the purposes of that paragraph);
- (d) the registration of third country auditors (as defined in section 1261 of that Act);
- (e) compliance with the requirements of legislation relating to accounting and reporting; and
- (f) the investigation of the conduct of auditors, accountants and actuaries and the holding of disciplinary hearings in public interest cases (as defined in paragraph 24 of Schedule 10 to that Act).

***Financial Services Authority***

25 The North Colonnade  
Canary Wharf  
LONDON  
E14 5HS  
Telephone 0845 606 1234

Matters in connection with activities relating to the Financial Services Authority such as: the carrying on of investment business or of insurance business; the operation of banks and building societies, deposit-taking businesses and wholesale money market regimes; the operation of friendly societies, benevolent societies, working men's clubs, specially authorised societies, and industrial and provident societies; the functioning of financial markets, investment exchanges and clearing houses; money laundering, financial crime; and other serious financial misconduct.

### ***Food Standards Agency***

10b Clarendon Road  
BELFAST  
BT1 3BG  
Telephone 028 9041 7700

Matters which may affect the health of any member of the public in relation to the consumption of food and other related matters concerning the protection of the interests of consumers in relation to food.

### ***Health and Safety Executive for Northern Ireland***

83 Ladas Drive  
BELFAST  
BT6 9FR  
Telephone 028 9024 3249

Matters which may affect the health or safety of any individual at work; matters which may affect the health or safety of any member of the public, arising out of, or in connection with, the activities of persons at work.

### ***Her Majesty's Revenue and Customs***

KAI Knowledge Resources  
Information Governance  
HM Revenue and Customs  
100 Parliament Street  
LONDON  
SW1A 2BQ

Value added tax, insurance premium tax, excise duties and landfill tax.  
The import and export of prohibited or restricted goods.  
Income tax, corporation tax, capital gains tax, petroleum revenue tax, inheritance tax, stamp duties, national insurance contributions, statutory maternity pay, statutory sick pay, tax credits, child benefits, collection of student loans and the enforcement of the national minimum wage.

### ***Information Commissioner***

51 Adelaide Street  
BELFAST  
BT2 8FE  
Telephone 028 9026 9380

Compliance with the requirements of legislation relating to data protection and to freedom of information.

### ***Local government auditors appointed by the Department of the Environment from the staff of the Northern Ireland Audit Office***

Room 56  
City Hall  
BELFAST  
BT1 5GS  
Telephone 028 9027 0254

The proper conduct of public business, value for money, fraud and corruption in district councils, joint committees, the Northern Ireland Local Government Officers' Superannuation Committee and the Local Government Staff Commission for Northern Ireland.

### ***Northern Ireland Authority for Utility Regulation***

Queens House  
14 Queen Street  
BELFAST  
BT1 6ED  
Telephone 028 9031 1575

The regulation of the generation, transmission, distribution and supply of electricity, and activities ancillary to these matters.

The regulation of the conveyance, storage and supply of gas through pipes, and activities ancillary to these matters.

The regulation of the abstraction, treatment, distribution and supply of drinking water to the public and activities ancillary to these matters.

The regulation of the collection, treatment and disposal of wastewater and sewage sludge and activities ancillary to these matters.

### ***Northern Ireland Commissioner for Children and Young People***

Millennium House  
17-25 Great Victoria Street  
BELFAST  
BT2 7BR  
Telephone 028 9031 1616

Matters relating to the rights and best interests of children and young people.

### ***Northern Ireland District Councils***

Individual Council numbers listed in The Phone Book

Matters which may affect the health or safety of any individual at work; matters which may affect the health or safety of any member of the public, arising out of or in connection with the activities of persons at work. Compliance with the requirements of consumer protection legislation. Compliance with the requirements of food safety legislation.

### ***Northern Ireland Human Rights Commission***

Temple Court  
39 North Street  
BELFAST  
BT1 1NA  
Telephone 028 9024 3987

Matters which engage human rights.

### ***Northern Ireland Social Care Council***

7th Floor  
Millennium House  
19-25 Great Victoria Street  
BELFAST  
BT2 7AQ  
Telephone 028 9041 7600

Matters relating to the registration and regulation of social care workers under the Health and Personal Social Services Act (Northern Ireland) 2001.  
The regulation of education and training in social work and social care work.

### ***Office of Communications***

2nd Floor  
Landmark House  
Gasworks  
Ormeau Road  
BELFAST  
BT7 2JD  
Telephone 028 9041 7500

Matters relating to–  
(a) the provision of electronic communications networks and services and the use of the electromagnetic spectrum;  
(b) broadcasting and the provision of television and radio services;  
(c) media ownership and control; and  
(d) competition in communications markets.

### ***Office of Fair Trading***

Fleetbank House  
2-6 Salisbury Square  
LONDON  
EC4Y 8JX  
Telephone 020 7211 8000

The regulation of the UK consumer credit market through a licensing system, and the application of consumer protection legislation where matters adversely affect the *collective* interests of UK consumers. The enforcement of Competition Law in the UK.

### ***Pensions Regulator***

Napier House  
Trafalgar Place  
BRIGHTON  
BN1 4DW  
Telephone 087 0606 3636

Matters relating to occupational and work based personal pension schemes.

### ***Registrar of Credit Unions and Industrial and Provident Societies***

1st Floor  
Waterfront Plaza  
8 Laganbank Road  
BELFAST  
BT1 3BS  
Telephone 028 9090 5343

The operation of credit unions and industrial and provident societies.

***Regulation and Quality Improvement Authority***

9th Floor  
Riverside Tower  
5 Lanyon Place  
BELFAST  
BT1 3BT  
Telephone 028 9051 7500

Matters relating to the standard of health and social care provided by both statutory and independent providers.

***Secretary of State for Transport***

Secretary to the Executive Board  
Maritime and Coastguard Agency  
Spring Place  
105 Commercial Road  
SOUTHAMPTON  
SO15 1EG  
Telephone 023 8032 9277

Compliance with merchant shipping law, including maritime safety.

***The Charity Commission for Northern Ireland***

4<sup>th</sup> Floor  
24-26 Arthur Street  
BELFAST  
BT1 4GF  
Telephone 028 9051 5490

The proper administration of charities and of funds given or held for charitable purposes.

***The competent authority under Part IV of the Financial Services and Markets Act 2000***

The listing of securities on a stock exchange; prospectuses on offers of transferable securities to the public.

***The Loughs Agency of the Foyle, Carlingford & Irish Lights Commission***

22 Victoria Road  
LONDONDERRY  
BT47 2AB  
Telephone 028 7134 2100

Acts or omissions which have an adverse or potentially adverse effect on inland fisheries or on migratory salmon or trout.

***Treasury***

1 Horse Guards Road  
LONDON  
SW1A 2HQ  
Telephone 020 7270 4558

The carrying on of insurance business.

***A person (“person A”) carrying out functions, by virtue of legislation, relating to relevant failures falling within one or more matters within a description of matters in respect of which another person (“person B”) is prescribed by this Order, where person B was previously responsible for carrying out the same or substantially similar functions and has ceased to be so responsible.***

Matters falling within the description of matters in respect of which person B is prescribed by this Order, to the extent that those matters relate to functions currently carried out by person A.

## Appendix 2

### Advice and Information

#### ***Labour Relations Agency (LRA)***

The LRA operates a helpline which deals with queries about employment matters, including the rights and obligations arising out of employment law. The service is available to any individual or organisation free of charge. Any worker who contacts the LRA will wish to bear in mind the distinction between seeking information about the provisions of the Public Interest Disclosure Order 1998, and the requirements attached to making a protected disclosure, as explained in the section *Circumstances in which disclosures are protected (a "protected disclosure")* on page 3 of this guide.

The LRA may be contacted at the following addresses:

HEAD OFFICE  
2-8 Gordon Street  
Belfast  
BT1 2LG

REGIONAL OFFICE  
1-3 Guildhall Street  
Londonderry  
BT48 6BB

Telephone: 028 9032 1442

Telephone: 028 7126 9639

Website: [www.lra.org.uk](http://www.lra.org.uk)

#### ***Public Concern at Work (PCaW)***

PCaW is an independent organisation which can provide guidance and training to employers on whistleblowing and can also offer free advice to employees unsure of whether or how to raise a concern about workplace wrongdoing. PCaW may be contacted at the following address:

Public Concern at Work  
3<sup>rd</sup> Floor, Bank Chambers  
6-10 Borough High Street  
London  
SE1 9QQ

Telephone (general enquiries and helpline): 020 7404 6609

Website: [www.pcaw.co.uk](http://www.pcaw.co.uk)

people:skills:jobs:



Department for  
**Employment  
and Learning**  
[www.delni.gov.uk](http://www.delni.gov.uk)



INVESTOR IN PEOPLE

**THE DEPARTMENT:**

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

**Further information:**

telephone: 028 9025 7580

e-mail: [employment.rights@delni.gov.uk](mailto:employment.rights@delni.gov.uk)

website: [www.delni.gov.uk](http://www.delni.gov.uk)