

Policy on disclosures to the Office of the Comptroller and Auditor General

March 2024

Introduction

This document is intended to set out for persons considering making a disclosure, the Office of the Comptroller and Auditor General's policy and high-level procedures in respect of disclosures received. The policy reflects the requirements of the Protected Disclosures Act 2014 as amended by the Protected Disclosures (Amendment) Act 2022 (the Protected Disclosures Act).

The Protected Disclosures Act provides a statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the context of current or past work-related activity. In the event that they are penalised by their employer, workers are entitled to remedies or defences under the Act, provided they reasonably believe the information and the allegations contained in the disclosure to be substantially true.

The Comptroller and Auditor General (C&AG) is a prescribed person under the legislation in relation to alleged wrongdoing relating to improper use of public funds and resources or to matters concerning value for money in respect of entities that fall within the remit of the C&AG. This means that disclosures of this type can be made to the Office.

In the case of any conflict between a provision of legislation and anything contained in this policy, the legislative provision shall prevail.

Application

Disclosures to the Office may emanate from a range of sources. These include

- Whistleblowers (i.e. workers¹ who make disclosures about alleged wrongdoing that they identify in the course of their work — the disclosures may be made in unprompted correspondence to the Office, or directly to staff of the Office in the course of an audit or an examination. The person making the disclosure may identify themselves or may be anonymous.
- Correspondence (or other forms of communication) from other persons, including clients of public bodies or third parties who come into possession of relevant information. The disclosures may be from individuals who identify themselves or may be anonymous.

All disclosures, however made, are taken seriously and all efforts are made to address appropriately the issues raised.

¹ A worker means an individual who has acquired information on a relevant wrongdoing in a work-related context. Please see Appendix A for a fuller description.

The C&AG, as the prescribed person, has overall responsibility for the protected disclosures policy in the Office. Oversight of its implementation rests with the Audit Board. The Private Secretary to the C&AG has been designated as the person with responsibility for its day-to-day operation, and in particular to receive disclosures.

A summary of the key definitions relevant to the protected disclosures legislation is set out at Appendix A.

What is a protected disclosure?

A protected disclosure is a disclosure of information which (1) in the reasonable belief of a worker, tends to show one or more relevant wrongdoings, (2) came to the attention of the worker in a work-related context, and (3) is disclosed in the manner prescribed in the Protected Disclosures Act.

In general, the Protected Disclosures Act encourages a worker to make a report of relevant information in the first instance, to their employer, but there is no obligation on a worker to do so. Reporting persons can report to a prescribed person or the Protected Disclosures Commissioner in the first instance, if they wish. However, in order to gain the protections of the Protected Disclosures Act, it is important that the report is made in the manner set out in the Act and that the following essential conditions apply

- the information came to the attention of the worker in a work-related context
- the worker has a reasonable belief that
 - the information tends to show relevant wrongdoing
 - the information and any allegations are substantially true and
 - the relevant wrongdoing falls within the description of matters for which the C&AG is a prescribed person.

A list of prescribed persons is available at <https://www.gov.ie/prescribed-persons>. A person considering making a disclosure to the C&AG should consult this listing to ensure the C&AG is the most appropriate prescribed person to receive a report on the relevant wrongdoing.

What type of disclosure is not protected by the Act?

A matter concerning interpersonal grievances exclusively affecting a reporting person, such as grievances about interpersonal conflicts involving the reporting person and another worker is not a relevant wrongdoing for the purposes of the Protected Disclosures Act.

In addition, the legislation provides that a matter is not a relevant wrongdoing (and does not come within the terms, or attract the protections and redress of the Act) if it is the function of the worker or the worker's employer to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of the employer.

The Office external reporting channel and procedures

The Office has established, in accordance with the legislation, a formal external reporting channel and procedures for persons to make disclosures.

The Private Secretary to the C&AG has been assigned responsibility for the operation of the channel. The Private Secretary is responsible for providing information to the public on how a person can make a report to the C&AG, receiving and following up on reports made via the external reporting channel and maintaining communication with the reporting person for the purposes of providing feedback and, where necessary, requesting further information from the reporting person. Specific and regular training for the purpose of handling reports is provided to the Private Secretary.

A disclosure report can be made in writing (by email or by letter) or orally. Oral disclosures can be made by telephone, in an on-line meeting, or in an in-person meeting which can be arranged with the Private Secretary within a reasonable period, if requested. Please note

- We may seek some information in advance of an on-line or in-person meeting e.g. the name of the body concerned; the nature of the alleged wrongdoing (see Appendix A); other information to establish that the matter being reported is relevant to the remit of the C&AG.
- On-line meetings may be recorded with the consent of the reporting person.
- For an in-person meeting, the location used will be agreed to ensure privacy and the protection of the identity of the reporting person. Another authorised staff member will accompany the Private Secretary during such meetings.

Depending on the type and complexity of the concerns being raised, some or all of the information in the disclosure may be referred to a senior manager with relevant knowledge and/or responsibilities (e.g. a senior audit manager) for assessment and/or follow-up.

The external reporting channel and procedures are independent and autonomous. They have been designed and established to ensure that the contents of any disclosure and any material arising from follow-up action are kept secure and confidential and are only available to the C&AG, the Private Secretary, and any other specifically authorised members of staff. Records of materials received, telephone conversations and voice messages left by the reporting person, and of on-line and in-person meetings with the reporting person will be held in a durable and retrievable form in accordance with the legislation.

Where a report is received by the Office through channels and procedures other than the normal external channel established in the Office, the report will be forwarded promptly and without modification to the Private Secretary, and any information that might identify the reporting person or a person named in the report ('person concerned') will be kept confidential.

Making a disclosure to the Office

To make a disclosure to the Office of the C&AG please contact the Private Secretary by

telephone: (01) 863 8679
 or write to: Private Secretary
 Office of the Comptroller and Auditor General
 3A Mayor Street Upper
 Dublin 1
 D01 PF72
 or email: disclosure@audit.gov.ie

Where a voice mail message is left by the reporting person, it will be recorded.

Where possible, a disclosure should contain

- the name of the individual (or individuals) making the disclosure and contact details
- the name of the public sector organisation(s) involved
- the relationship between the reporting person and the organisation(s) involved
- the name(s) of the person(s) who it is alleged have engaged in wrongdoing (i.e. the person(s) concerned)
- the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified
- whether or not the alleged wrongdoing is still ongoing

- whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken
- information in respect of the alleged wrongdoing (what is occurring/has occurred and how) and any supporting information/documentation
- any evidence to hand that would benefit the assessment decision of the Office
- any other relevant information.

Stages in managing disclosures received

Acknowledgement

Where the reporting person's identity and contact details are made known to us, we will acknowledge in writing, receipt of the disclosure report within seven calendar days of its receipt. There are two exception to this

- where the reporting person has requested otherwise or
- we reasonably believe that acknowledgement of the receipt would jeopardise the protection of the identity of the reporting person.

Our acknowledgement will provide further information about the Office's disclosures process that will apply to the handling of the report.

Initial assessment

An initial assessment of the disclosure will be carried out by the Private Secretary and/or a senior member of the relevant audit team. This initial assessment will seek to determine

- if there is prima facie evidence that a relevant wrongdoing may have occurred and if it should be treated as a protected disclosure, having regard to the provisions of the Act
- whether the report falls within the scope of the matters for which the C&AG has responsibility as a prescribed person.

The following are some additional matters taken into account by the Office in deciding on the appropriate course of action to take in response to a disclosure received

- whether the matter disclosed is relevant to the C&AG's legal remit
- the extent to which information in a disclosure may be considered reliable and whether it can be corroborated from other sources

- the materiality, or financial significance, of the matter disclosed
- whether the information disclosed is sufficient to indicate that serious wrongdoing has occurred or that there are issues of significant concern
- the availability of resources and competing work priorities.

The initial assessment may include clarifying the information reported or seeking further information from the reporting person.

If the initial assessment shows that all or part of a report concerns matters which are not within the scope of matters for which the C&AG has been prescribed under the Act, the report – in whole or in part, as appropriate – will be transmitted to such other prescribed person² or persons considered appropriate³. Where no such other prescribed person is considered appropriate, the report will be transmitted to the Protected Disclosures Commissioner⁴. The reporting person will be notified in writing, as soon as practicable of the decision and the reasons for it. The Office will use secure file transfer systems for transmission of the report so as to ensure its security and confidentiality.

Where a report of a disclosure concerns a breach of EU law, as provided for in the Protected Disclosures Act, the C&AG will send the information to the relevant EU bodies as soon as practicable, where this is provided for under EU or Irish law.

If the initial assessment concludes that there is no prima facie evidence that a relevant wrongdoing may have occurred, the matter will be closed.

If the initial assessment concludes that there may be a relevant wrongdoing but that it is clearly minor and does not require further follow up, the matter will be closed.

If the initial assessment shows that the report does not contain any meaningful new information about a relevant wrongdoing compared to a past report where the procedures have been concluded, unless new legal or factual circumstances justify a different follow up, the matter will be closed.

² A relevant prescribed person is a person who is nominated by the Minister for Public Expenditure, National Development Plan Delivery and Reform to receive protected disclosures in relation only to matters that fall within the remit of that person or public body.

³ In instances where the initial report was received by the Protected Disclosures Commissioner and referred to the Comptroller and Auditor General because certain matters, but not all matters, in the disclosure are within the scope of the Comptroller and Auditor General, the legislation does not allow for the residual matters to be referred onwards by the Comptroller and Auditor General.

⁴ The Protected Disclosures Commissioner can receive and redirect protected disclosures to the most suitable authority and effectively acts as a recipient of last resort in respect of certain reports. Only as a last resort will the Commissioner directly follow up on a report.

The designated person will inform the reporting person, as soon as practicable, if any of these outcomes arise and the reason for the decision.

Follow up

The Protected Disclosures Act does not confer on the C&AG any additional powers of follow up or examination. The C&AG must therefore rely on the powers given to him under legislation in order to carry out follow-up of any disclosures.

The C&AG's functions are set out principally in the Comptroller and Auditor General (Amendment) Act 1993 (the 1993 Act). Broadly, the C&AG is required to carry out audits of annual financial statements and may, at his sole discretion, carry out 'value for money' examinations in relation to public sector bodies within his remit, and to report the results of that work to Dáil Éireann. He may also inspect the accounting records of bodies in receipt of the majority of their funding from the exchequer.

The C&AG can follow up on disclosures received only in the context of those powers. This means that the C&AG

- is precluded from commenting on or inquiring into policy matters
- has no remit to follow up allegations of corruption or other criminal wrongdoing, but may refer such matters to another appropriate body
- has no role in resolving disputes between audited bodies and clients, suppliers or employees (or former employees)
- has no role in resolving individual complaints or directing bodies to provide redress.

In many cases, substantive disclosures received about matters within the C&AG's remit will be considered as part of the planning of the next succeeding audit of the financial statements of the public body (or bodies) concerned. In general, the consideration will focus on identifying any breaches of financial control that may have occurred, is occurring or that might occur in the future; or any evidence that public money has been, or is being, used improperly or ineffectively to a material degree.

Concerns about systemic failures of value for money (VFM) may be followed up through a VFM examination carried out under section 9 of the 1993 Act. VFM issues identified from disclosures received are periodically assessed together with VFM issues identified in other ways e.g. arising from annual audits, from routine sector surveys, and from PAC, media or other public concerns. The C&AG prioritises issues for examination, if necessary and appropriate, having regard to the available examination resources.

When the Office has decided on the appropriate course of action to be taken in regard to a disclosure, the decision taken will be notified to the reporting person.

Feedback

The C&AG (and his officials) can only request records or other information from audited bodies for the purposes of an audit, examination or inspection, and for any subsequent public reporting to Dáil Éireann and/or to the Committee of Public Accounts. Information collected for those purposes cannot be provided to reporting persons.

Feedback will be provided to the reporting person to the greatest extent possible consistent with the C&AG's legislative reporting remit. Where possible, the feedback will explain the action taken or envisaged as follow-up and the reason for such follow-up.

The Office will provide feedback within three months from the date of acknowledgement of the report, or within six months where it is justified due to the particular complexity of the report. We will inform the reporting person, as soon as is practicable, where a decision to extend the timeframe from three to six months has been taken.

Where a report has been transmitted to the C&AG by the Protected Disclosures Commissioner or by another prescribed person, the three-month or six-month timeframe will start from the date the report was first made, not the date of transmission.

Further feedback will be provided at quarterly intervals until the procedure relating to the report has been closed, if requested in writing by the reporting person.

Follow-up of a disclosure is usually tied into the normal annual financial audit cycle. Depending on when a disclosure is received, this may sometimes mean that no direct action may be taken for nine to 12 months. This can result in feedback reports indicating limited progress in some report periods.

Communication of final outcome

Legislation specifies the ways in which the C&AG can report. For example, he reports publicly to Dáil Éireann on significant matters arising from his audits of the appropriation accounts of government departments and offices, on general matters arising from a number of audits, and on 'value for money' examinations undertaken. This reporting may include drawing attention publicly to any significant findings in relation to lapses in financial controls, irregular spending, losses incurred, etc.

Where a disclosure received leads directly to a public report by the C&AG, the reporting person will be informed of the publication, and provided with a copy of the public report. Otherwise, the Office cannot directly inform those who have made disclosures of the results of the Office's engagement with the relevant public sector body. The Office acknowledges that this may be a source of dissatisfaction.

Anonymous disclosures

A person making a disclosure may wish to remain anonymous. An anonymous disclosure is where the reporting person withholds their identity.

The Office accepts and will follow-up on anonymous disclosures. We may however, be restricted in our ability to implement some elements of this policy, such as following up a matter or keeping the reporting person informed, in the absence of the knowledge of the identity of the reporting person. Where the anonymous report contains enough information to allow an initial assessment that there is prima facie evidence that a relevant wrongdoing has occurred or if communication with the reporting person is possible (e.g. via an anonymous email account), follow-up action will be taken to the extent that is possible from the information provided.

The reporting person should also be aware that it is not possible to obtain protection under the protected disclosures legislation unless the reporting person identifies themselves as part of that process.

Protecting the identity of those making disclosures

The identity of any person making a disclosure to the Office will be protected in accordance with the legislation. The Private Secretary and any other member of staff who receives a disclosure report or with whom a report is shared (to allow them to carry out their functions in relation to the report) is prohibited from disclosing the identity of the reporting person to anyone else (or any information that might reveal the identity of the reporting person) without the explicit consent of the reporting person, other than strictly within the provisions permitted in the protected disclosures legislation.

The legislation does not prohibit the C&AG or the Private Secretary from disclosing the identity of the reporting person where s/he reasonably considers it necessary for the purposes of the receipt, transmission, or follow-up of the report e.g. to a member of the audit team involved in following up the report or another staff member who may have the necessary technical expertise to assist with the follow up. Such persons however are also prohibited from disclosing the identity of the reporting person.

Notwithstanding the above, the Private Secretary will always ensure that the identity of the reporting person is only ever shared on a 'need to know' basis and only where it is necessary in connection with a report.

Office policy is to seek the informed consent of the reporting person, where action is to be taken following a protected disclosure, such as where the matter is to be referred to another appropriate body or the concerns in the report raised with the reporting person's employer. However, in certain circumstances, it may be necessary to refer the matter to another appropriate body even where consent is not forthcoming .e.g. where it is in the public interest to do so, or where it is required by law.

The reporting person will be informed of any decision which involves the disclosure of their identity to other bodies outside the Office in advance of the disclosure, and the reasons for the disclosure, unless it is considered that such notification would jeopardise

- the effective follow up of the wrongdoing,
- the prevention of serious risk to the security of the State, public health, public safety or the environment, or
- the prevention of crime or prosecution of a criminal offence.

Accordingly, **an absolute assurance of confidentiality cannot be given.**

Review of a decision to disclose identity

A reporting person can request a review of any decision to disclose their identity (except where it is deemed to be in the public interest to do, required by law or is a necessary and proportionate obligation imposed by EU law or Irish legislation in the context of investigations or judicial proceedings).

A request for review should be submitted to the Secretary and Director of Audit within ten days of the issue of a decision notification letter. The request for review should set out the reason(s) why a review is being sought. The review will be carried out by a more senior person to the person who made the original decision and will address the specific issues the applicant feels have received insufficient consideration. The outcome of the review will be final.

Rights of persons identified in a disclosure ('person concerned')

The identity of any person referred to in a disclosure report to the Office as a person to whom wrongdoing is attributed or associated with (known as a 'person concerned'), will be protected by the Office in accordance with the protected disclosures legislation, unless disclosure of the identity is necessary for the purposes of the Act or is otherwise authorised or required by law.

If the Office intends to include allegations or make adverse comments concerning a person who is named or capable of being identified in a report, the Office will make available to that person either a draft of the report or of that part of the report which contains the allegations or adverse comments concerning that person, or a summary of the allegations or adverse comments. This will be done in sufficient time before publication of the report so as to give the person concerned a fair opportunity to reply to and/or contest the allegations or adverse comments.

The rights under the General Data Protection Regulations (GDPR) and the Data Protection Act 2018 of any person identified in a disclosure will be respected. The exercise of the right to information and to access may be restricted or deferred where the Office considers there is a risk that such exercise would be detrimental to its examination of the matter. (See data protection section below).

Data protection

Any processing of personal data pursuant to the Protected Disclosures Act, including the exchange or transmission of personal data will be carried out in accordance with GDPR and data protection legislation.

In accordance with general data protection principles, any personal data that is manifestly not relevant to the handling of a specific report will not be collected or if collected accidentally will be deleted without undue delay.

The Office will adopt sufficient technical and organisational security measures to maintain the security and confidentiality of any information received in a disclosure, so as to protect such information from accidental or unlawful destruction or loss or unauthorised access to or disclosure of the information. These security measures will also apply to any reports or other material generated as a result of enquiries being carried out into the matters contained in any disclosure received.

As part of these measures, access to the information contained in any disclosure received from a whistleblower will be restricted to the staff within the Office responsible for managing, and those who are explicitly tasked with enquiring into, the matters contained in the disclosure.

In certain circumstances, the rights of data subjects under data protection law may be restricted in respect of their personal data processed for the purposes of the Protected Disclosures Act.

The restrictions will apply, to the extent necessary, and for as long as is necessary, to prevent and address any attempt to hinder reporting or to impede, frustrate or slow down follow-up, or attempts to find out the identity of reporting persons. They will also apply to the extent necessary and proportionate for the purposes of safeguarding the important objectives of general public interest and for the protection of the data subject or the rights and freedoms of others.

The Office will inform the data subject where a restriction is being applied, unless to do so would involve the disclosure of information that might identify the reporting person, prejudice the effective follow-up of the relevant wrongdoing, or prejudice the achievement of any important objectives of general public interest.

A data subject, who has been informed of a restriction by the Office, can lodge a complaint with the Data Protection Commission (DPC) or seek a judicial remedy in relation to such restriction. Contact details for the DPC can be accessed on their website: <https://www.dataprotection.ie>.

The Office will ensure that relevant data in respect of which the Office is the controller is stored for no longer than is necessary for the fulfilment of the important objectives of general public interest.

Record keeping

The Office will retain a record of every disclosure report made or transmitted to it, including anonymous reports.

The Office uses a voice messaging system for unanswered calls. Where a reporting person leaves a voice mail message reporting their concerns, a recording of the report will be kept in a durable and retrievable form; or a complete and accurate transcript of the conversation will be prepared with the consent of the reporting person, who will be given an opportunity to check, rectify and agree by way of signature the transcript of the conversation.

Where the reporting person requests a meeting in person with a member of staff, a recording of the meeting may be made with the consent of the reporting person. Otherwise, accurate minutes will be taken and where the reporting person has disclosed their identity, they will be given the opportunity to check, rectify and agree the minutes of the meeting.

Where an anonymous disclosure is received, the Private Secretary will record such information relating to the disclosure that they consider necessary and appropriate for the purposes of the Protected Disclosures Act. For example, this may include the details of the alleged wrongdoing and the identity of other persons referred to in the disclosure.

Records will be retained for no longer than is necessary and proportionate to comply with the provisions of the Protected Disclosures Act or any other legislation.

The Office's records management policy notes that protected disclosures and other disclosures of issues of concern or alleged wrongdoing in regard to the administration of public money shall be retained for 30 years from the date on which the information is received by the Office.

Withdrawal of a protected disclosure

Once a protected disclosure has been made in accordance with the Protected Disclosures Act, it is not possible for a reporting person to withdraw the disclosure. Reporting persons are required to co-operate with the Office to such extent as may reasonably and lawfully be required for the purposes of the Act. Where co-operation is withdrawn or the reporting person seeks to withdraw a protected disclosure, the Office is still required to comply with the provisions of the Protected Disclosures Act, to the greatest extent possible.

Legal advice and support services

The Office cannot offer any legal advice. If you are considering making a disclosure, and have concerns about the law in that regard, we recommend that you seek independent legal advice in advance of doing so.

Advice and support to anyone considering making a protected disclosure is available from Transparency International Ireland's free confidential speak-up helpline at 1800 844 866.

Further information on the resources available can be found on their website at the following link: <https://transparency.ie>.

Callers to the speak-up helpline may also be able to avail of Transparency International Ireland's legal advice centre which provides free legal advice to anyone who wishes to disclose wrongdoing as provided for under Irish law.

Advice and support may also be available from a workers' trade union as well as through Citizens' Information.

Specific legislation

In certain circumstances under individual pieces of legislation, disclosures may be brought to the attention of the Office. Persons seeking to make a disclosure to the C&AG in these circumstances should ensure that they are in compliance with all requirements set out in the legislation. For example, it may be necessary to exhaust internal procedures before referring the matter to the C&AG.

Freedom of information

The Freedom of Information (FOI) Act does not apply to a record relating to a report made under the Protected Disclosures Act, whether the report was made before or after the date of the passing of the Protected Disclosures (Amendment) Act 2022.

Records concerning a public body's general administration of its functions under the Protected Disclosures Act are subject to FOI, however.

Protections and remedies

The Protected Disclosures Act provides certain protections and remedies, where applicable, for reporting persons. These include protection from penalisation including dismissal, unfair treatment, coercion and harassment as well as immunity from civil and criminal liability for having disclosed confidential information and protection of the reporting person's identity, with certain exceptions.

Penalisation is defined in the legislation as ‘*any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report and causes or may cause unjustified detriment to a worker*’. It includes for example, dismissal, unfair treatment or threats of reprisal, loss of a promotion opportunity or a negative performance review. A non-exhaustive list of examples from the Protected Disclosures Act of what may constitute penalisation is provided at Appendix A.

A reporting person should consult their employer’s protected disclosure procedures for information on how and to whom any complaint of penalisation should be made.

The Protected Disclosures Act provides for specific external remedies for workers who believe they have been penalised for making a protected disclosure. These include

- a claim for a remedy to the Workplace Relations Commission under the Unfair Dismissals Acts 1997 - 2015: where a worker is dismissed from their employment as a result of making a protected disclosure.
- *a claim for penalisation before the Workplace Relations Commission*: The claim must be brought within six months of the penalisation. The alleged penalisation will be deemed to have been as a result of the reporting person having made a protected disclosure, unless the employer proves that the act or omission was justified on other grounds. The burden of proof therefore lies with the employer.
- *a claim for injunctive relief in the Circuit Court*: The claim must be brought within 21 days of the last instance of penalisation.

Section 14 of the Protected Disclosures Act provides that, with the exception of defamation, civil legal action cannot be taken against a worker for making a protected disclosure. Workers can be sued for defamation but are entitled to a defence of “qualified privilege”. This means that it should be very difficult for a defamation case against a worker to succeed if the worker can show they made a protected disclosure in accordance with the Protected Disclosures Act and did not act maliciously. There is no other basis under which a worker can be sued if they have made a protected disclosure in accordance with the Protected Disclosures Act – e.g. for breach of confidentiality.

However, a disclosure report made in the absence of a reasonable belief that the information disclosed tended to show a relevant wrongdoing, will not attract the protection of the Act and may result in disciplinary action against the reporting person. Moreover, disclosure of a wrongdoing does not necessarily confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing.

The Protected Disclosures Act imposes an obligation on report recipients to protect the identity of the reporting person. Further details on this protection can be found on page 9.

A protected disclosure is not a criminal offence under the protected disclosures legislation. The Protected Disclosures Act provides that in the prosecution of a person for an offence prohibiting or restricting the disclosure of information, it is a defence to show that, at the time of the alleged offence, the disclosure was, or was reasonably believed by the person to be a protected disclosure.

The Protected Disclosures Act sets out a range of criminal offences for breaches of the protections provided by the Act. For example, it is a criminal offence to

- hinder or attempt to hinder a worker in making a report
- penalise or threaten penalisation against a reporting person and associated third parties
- bring vexatious proceedings against any person or associated third party
- breach the duty of confidentiality regarding the identity of reporting persons
- make a report containing any information that the reporting person knows to be false.

Assessing whether a disclosure is a protected disclosure

The Office has no role in assessing what is or is not a protected disclosure as defined in the legislation. This is a matter of law which, in the case of a dispute, will fall to the Workplace Relations Commission or the courts to decide. The Office will provide such information as may be required by the Commission or the court for the purposes of making a determination in any proceedings by a reporting person as to whether they are entitled to the protections provided under the Protected Disclosures Act.

Annual report

The Office will, in accordance with section 22 of the Protected Disclosures Act, provide an annual report to the Minister for Public Expenditure, National Development Plan Delivery and Reform by 1 March each year. It will provide information in respect of the preceding calendar year including the number of disclosure reports received in the year, the number of reports transmitted to the Protected Disclosures Commissioner or another prescribed body, etc. This information will also be published on the Office's website by 31 March each year. The information will be provided in a way that protects the identity of all parties involved.

Evaluation and review

The Office will review its external reporting channel procedures regularly and at least once every three years.

Conduct around disclosures

Disclosures made to the Office will be handled professionally and courteously. Those making disclosures are likewise expected to behave reasonably and courteously. The Office has in place procedures to handle unreasonable conduct (see Appendix B).

Appendix A

Key definitions from the Protected Disclosure Act

Worker

For the purpose of the Protected Disclosures Act, a worker means an individual who has acquired information on a relevant wrongdoing in a work-related context. A worker includes

- a. an individual who is or was an employee,
- b. an individual who entered into or works or worked under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertook to do or perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party's business,
- c. an individual who works or worked for a person in circumstances in which
 - i. the individual is introduced or supplied to do the work by a third person, and
 - ii. the terms on which the individual is engaged to do the work are or were in practice substantially determined not by the individual but by the person for whom the individual works or worked, by the third person or by both of them,
- d. an individual who is or was provided with work experience pursuant to a training course or programme or with training for employment (or with both) otherwise than under a contract of employment,
- e. an individual who is or was a shareholder of an undertaking,
- f. an individual who is or was a member of the administrative, management or supervisory body of an undertaking, including non-executive members,
- g. an individual who is or was a volunteer,
- h. an individual who acquires information on a relevant wrongdoing during a recruitment process, and
- i. an individual who acquires information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process referred to in (h) above).

Civil Servants, members of An Garda Síochána, members of the Permanent Defence Forces and members of the Reserve Defence Forces are also deemed to be workers under the Act.

Relevant wrongdoing

For the purposes of the Protected Disclosures Act, the following are relevant wrongdoings

- 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,
- h. that a breach of specified EU law set out in the Directive has occurred, is occurring or is likely to occur, or
- i. that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed or an attempt has been, is being or is likely to be made to conceal or destroy such information.

Reporting person

'Reporting person' means a worker who makes a report in accordance with the Protected Disclosures Act.

Person concerned

'Person concerned' means a natural or legal person who is referred to in a report as a person to whom the relevant wrongdoing is attributed or with whom that person is associated.

Penalisation

Penalisation means any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report and causes or may cause unjustified detriment to a worker, and, in particular, includes

- a. suspension, lay-off or dismissal,
- b. demotion, loss of opportunity for promotion or withholding of promotion,
- c. transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- d. the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- e. coercion, intimidation, harassment or ostracism,
- f. discrimination, disadvantage or unfair treatment,
- g. injury, damage or loss,
- h. threat of reprisal,
- i. withholding of training,
- j. a negative performance assessment or employment reference,
- k. failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanent employment,
- l. failure to renew or early termination of a temporary employment contract,
- m. harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income,
- n. blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry,
- o. early termination or cancellation of a contract for goods or services,
- p. cancellation of a licence or permit, and
- q. psychiatric or medical referrals.

Work-related context

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

Appendix B

Unreasonable behaviour policy

Office staff are expected to listen to and treat persons making disclosures fairly and with respect and remain professional and courteous at all times.

Likewise, the Office expects persons making a disclosure to behave in a reasonable manner. Behaviour that is abusive, offensive, threatening or — due to the frequency of contact — accounts for a disproportionate amount of time and resources will not be tolerated.

The following types of behaviour are classified as unreasonable

- **Unreasonable persistence:** Persistence with an issue that has already been examined and closed by the Office or by the C&AG e.g. insisting that an issue be re-examined, re-framing the issue to present it as a new issue, or persevering with an argument that has earlier been addressed. Submitting multiple correspondence or constantly repeating the same allegation before a decision has been made on the original disclosure could also be considered unreasonable persistence.
- **Unreasonable demands:** Demanding an outcome that is unrealistic. For example, repeated demands for examination of a matter that is outside the remit of the Office, presentation of voluminous material while expecting an almost instantaneous response or trying to direct the Office to conduct an examination or the manner in which the examination should be carried out.
- **Unreasonable conduct:** Unreasonable conduct includes making recordings of meetings/conversations without agreement, threats of violence or abuse of Office staff, derogatory or sarcastic remarks, rude or aggressive conduct and engaging in unnecessary and time-wasting arguments or confrontation with staff.

Managing unreasonable behaviour

When the Office considers that a person's behaviour is unreasonable, the person will be advised of this and requested to adapt their behaviour. If the unreasonable behaviour continues, the Office will take action to restrict the person's contact with the Office. The decision will be taken at deputy director level or above following a review of the circumstances and may include

- requesting contact in a particular form e.g. only in written form
- requiring contact to take place with a named officer only
- restricting telephone calls to specified days and times
- restricting access to the Office premises, and
- ultimately if necessary, terminating all contact with the person (this decision will be taken by the Secretary and Director of Audit).

Where the behaviour threatens the immediate safety and welfare of Office staff, it may be necessary to report the matter to An Garda Síochána.

Unreasonable behaviour by a member of OCAG staff

Where you have concerns or are dissatisfied with the manner in which you have been dealt with by staff of the Office, you can contact us by

telephone: (01) 863 8600

or write to: Head of Corporate Services
Office of the Comptroller and Auditor General
3A Mayor Street Upper
Dublin 1
D01 PF72

or email: Headofcorporateservices@audit.gov.ie

The Office will acknowledge receipt of your correspondence within seven working days. Concerns raised will be examined against the Office's service commitments and we will seek to respond to the substantive matter as soon as is practicable. The aim is to reply within 30 days but in some instances it may take longer.