

# Whistleblowing at work

## 1 . The law

Whistleblowing is the action someone takes to report wrongdoing at work that affects others. For example, it could affect the general public.

Legally this is known as 'making a disclosure in the public interest'.

The action of whistleblowing is sometimes called 'blowing the whistle'.

## Who is protected by law

By law, most people are protected if they make a qualifying disclosure. This includes:

- workers
- employees
- agency workers
- apprentices
- NHS practitioners
- student nurses
- student midwives
- police
- office holders
- self-employed doctors, dentists, ophthalmologists and pharmacists working in the NHS

Protection starts from the beginning of employment.

People are still protected even if they no longer work for the employer they're making a disclosure about.

For example, if you believe your previous employer gave an inaccurate job reference because you made a disclosure when working for them.

## Who is not protected by law

People are not usually protected in law if they're:

- genuinely self-employed
- a volunteer with no enforceable employment contract
- a non-executive director
- a member of the armed forces
- a solicitor or barrister learning about an issue covered by professional privilege
- a crown employee dealing with national security – for example, people who work for MI5, MI6 or GCHQ

An employer might have a policy that says someone who is not protected by law can still make a disclosure to them. This is usually because the employer wants to try and resolve problems directly. In these circumstances the person must follow the process in that policy to make a disclosure. A policy like this does not mean the person making the disclosure becomes protected by law.

## What the law protects whistleblowers from

By law (the Public Interest Disclosure Act 1998), whistleblowers are protected from:

- [unfair dismissal](#) – if someone is dismissed for whistleblowing, it will be treated as an automatic unfair dismissal
- detriment

Detriment means someone experiences one or both of the following because they made a disclosure:

- being treated worse than before
- having their situation made worse

Examples of detriment could be:

- their employer reduces their hours
- they experience [bullying](#)
- they experience [harassment](#)
- their employer turns down their training requests without good reason

If you're [legally classed as a worker](#) you cannot claim unfair dismissal. However, you might be able to argue that you being dismissed was a detriment. This is a complicated area of employment law. If you want to take further action you should [get legal advice](#).

## How whistleblowers can claim protection

To claim protection, whistleblowers must show they:

- made a qualifying disclosure
- followed the correct disclosure procedure
- were dismissed or suffered a detriment as a result of making the disclosure

Find out:

- [what someone can make a disclosure about](#)
- [how to make a whistleblowing disclosure](#)

## Employment tribunal time limit

You would usually have 3 months minus 1 day from the date of the unfair dismissal or detriment to make a claim to an employment tribunal.

You may be able to claim interim relief if you are:

- [legally classed as an employee](#)
- making a claim for unfair dismissal as a result of making a protected disclosure

You must make an application for interim relief within 7 days of the 'effective date of termination'.

Find out more about:

- [interim relief](#)
- [making a claim to an employment tribunal](#)

## 2. What someone can whistleblow about

By law, there are several issues you can whistleblow about. These are called 'qualifying disclosures'.

Qualifying disclosures include:

- a criminal offence – for example, an employer has been trying to bribe people
- the breach of a legal obligation by an organisation – for example, an employer has neglected their duty of care towards children in a care home
- a miscarriage of justice – for example, a member of staff has been dismissed for something that turned out to be a computer error
- someone's health and safety being in danger – for example, an employer has forced staff to serve contaminated food
- damage to the environment – for example, an employer has been regularly polluting local rivers

You can also whistleblow about someone trying to cover up information about any of these issues.

You can make a qualifying disclosure about an issue that's happened at any time. This includes if it's likely to happen in the future. It can also be about something that takes place overseas.

You can report one or more qualifying disclosures.

### When a qualifying disclosure is protected

By law, you'll be protected as a whistleblower if you can show it's reasonable for you to believe that what you disclose:

- fits into one of the categories of a qualifying disclosure
- is in the public interest

In the public interest means it has to also affect others. For example, other workers, customers or the general public. A problem or grievance that is personal to only you is unlikely to count as being in the public interest.

Something is more likely to be in the public interest:

- the more serious the issue is
- if you're reporting something that was done deliberately
- if the issue involves a large, influential or well-known employer
- if there are a large number of people affected by the concerns

### When you will not be protected

You will not be protected when making a qualifying disclosure if you:

- commit a criminal offence by disclosing the information – for example, hacking into computer files
- breach legal professional privilege – for example, if you're a legal adviser and learn about something when giving legal advice

In Scotland, legal professional privilege is sometimes called 'confidentiality as between client and professional legal adviser'.

## Resolving a personal problem at work

If your concern is a personal problem only and not in the public interest, it will not be covered by whistleblowing law. In these cases you might be able to resolve the problem another way.

[Find out more about how to raise a problem at work](#)

## Whistleblowing about health and safety breaches

By law (Employment Rights Act 1996), people [legally classed as employees or workers](#) are protected if they whistleblow about health and safety.

[Find out more about reporting an issue about health and safety from the Health and Safety Executive](#)

## 3. How to make a disclosure

By law (the Public Interest Disclosure Act 1998), you can make a whistleblowing disclosure to one of the following:

- your employer or another person who is responsible for the wrongdoing
- a legal adviser
- government ministers – this only applies if you work for a statutory body
- a prescribed person or body
- any other person or body, for example, the police or media – there must be a good reason to, or it must be related to an 'exceptionally serious failure'

You must also make sure your disclosure is made with 'reasonable belief' and is:

- a qualifying disclosure
- in the public interest

[Find out more about what you can whistleblow about](#)

## Deciding who to make a disclosure to

When making a disclosure, it's good practice to consider the list in order. But there might be cases when you do not want to go to your employer first.

You will have to meet more requirements if you make a disclosure to someone further down the list. The only exception to this is legal advisers, who you can speak to at any time.

For example, if you had a health and safety concern, you could make a disclosure to your employer. If the problem is not resolved, you could then make the same disclosure to the Health and Safety Executive which is a prescribed body.

You might have to give reasons for who you made the disclosure to if the case reaches an employment tribunal.

You can skip people in the list if you think it's not appropriate to disclose to them. But you should consider every option first.

For example, other employees made disclosures to your employer. As a result, they were threatened by managers who they exposed in the disclosures. You might decide you have no choice but to skip disclosing to your employer.

## Your employer

You should consider making the disclosure to your employer first. In most cases this will mean your concerns are dealt with quickly and by the best person.

You should make it as clear as possible to your employer that you're making a disclosure. You could do this by:

- following the process in your organisation's whistleblowing policy, if there is one
- writing a letter to the most appropriate person in your organisation stating that you're making a disclosure – this might be a line manager or someone named in your organisation's whistleblowing policy

Your disclosure does not need to be in writing. For example, you could make a disclosure to your employer in a private meeting. However it's better to put it in writing so you have evidence that you made the disclosure. This could be a letter or an email.

## Another person who is responsible for the wrongdoing

You can make a disclosure to another person other than your employer. You must reasonably believe that the wrongdoing relates to their conduct.

For example, you've been working with a contractor company who you believe is responsible for a health and safety breach. If you wanted to whistleblow, you could make the disclosure to them instead of your employer.

When you make the disclosure, you must reasonably believe that the person is responsible for the wrongdoing.

Even though you did not make the disclosure to your employer, you would still be protected by whistleblowing law if they:

- dismissed you because you made the disclosure
- subjected you to detriment because you made the disclosure

[Find out more about the law on whistleblowing](#)

## A legal adviser

Your disclosure will be protected if you make it to a legal adviser while you're getting legal advice.

A legal adviser will not be protected if they make a disclosure about something they have learnt when giving legal advice.

## A government minister

A disclosure you make to a government minister will be protected if you work for a:

- government-appointment organisation
- non-departmental public body

You can do this either directly or through departmental officials.

## A prescribed person or body

In some cases you might need to make a disclosure to an official person or body who has responsibility for your concerns. For example:

- a commissioner
- an auditor

- a regulator
- a government authority

Some of these official bodies are known as a 'prescribed person or body'. It's easier to be protected as a whistleblower if you raise a concern with them.

You must make sure that you have picked the correct prescribed person or body to get the most protection. For example, you can disclose breaches of health and safety regulations to the Health and Safety Executive or an appropriate local authority.

It's also important to follow the instructions given by the prescribed person or body on how to make a disclosure. For example, they could ask you to fill out a form or call a specific number.

[Find out more about the list of prescribed people and bodies on GOV.UK](#)

## Any other person or body related to an exceptionally serious failure

In very rare circumstances you might want to make a disclosure to another person or body about a failure which is exceptionally serious.

There's no legal definition of what an exceptionally serious failure is. It would be up to a court or employment tribunal to decide whether it was reasonable for you to make the disclosure.

You must have reasonable belief that:

- you would be subject to a detriment by your employer
- the detriment would be because you disclosed to your employer or to another prescribed person

You will not be protected if you make a disclosure for personal gain. For example, if you sold your story to a newspaper.

If you think your situation involves an exceptionally serious failure, you should consider:

- [getting legal advice](#)
- [contacting Protect](#) – a UK whistleblowing charity which offers free legal advice

## How you can make a disclosure

You should put your disclosure in writing. This could be in an email or a letter.

Some prescribed persons or bodies will also have a number you can call to make a disclosure.

In your disclosure you could include:

- the background and reason behind the concern
- whether you've already raised the concern with anyone else and their response
- any relevant dates

You could also include any relevant evidence, for example documents, photographs, videos or samples. However it's important to remember that it's not your responsibility to gather evidence. If you take documents or pass them to someone outside your organisation, you might be in breach of your contract or other laws.

## Raising a grievance

It's usually not good practice to make a qualifying disclosure through a grievance to your employer. This is because grievance procedures are not designed to address these sorts of concerns. You might also lose some confidentiality if you raise your concern this way.

However, a grievance can be a qualifying disclosure if it contains an appropriate disclosure of information. If you're raising a grievance you should state that your grievance includes a disclosure.

## If you cannot disclose to anyone on the list

If you feel that you cannot make a disclosure to any of the above people or bodies, you should consider:

- [getting legal advice](#)
- [contacting Protect](#)
- [talking to your MP or MSP](#) – they might be able to give advice on who to raise your concern with

## Get more advice and support

If you have any questions about whistleblowing you can contact:

- [the Acas helpline](#) – for more advice on whistleblowing, dismissal and detriment
- [Protect](#) – a UK whistleblowing charity which offers free legal advice
- [the National Guardian's Office](#) – for advice on speaking up in the NHS

## 4. Responding to a disclosure

As an employer, whistleblowing can help you:

- identify risks and potential wrongdoing
- take action on issues within your organisation

There are several things you should do if an employee or worker makes a whistleblowing disclosure.

Handling a disclosure might seem complicated and take a lot of time. But it can help resolve problems early and stop them from getting worse.

## Follow the right process

It's important to make sure that you:

- handle any whistleblowing complaint fairly and consistently
- follow any process your organisation has for whistleblowing
- keep the identity of the whistleblower confidential

## If your organisation has a whistleblowing policy

If you have a whistleblowing policy, you should make sure:

- it's followed whenever a whistleblowing complaint is made
- that staff know about the policy and any procedure to follow

- that all line managers and HR staff are fully trained and up to date with the latest procedures
- you regularly review your processes to check they are effective

## **If there is no whistleblowing policy**

If your organisation does not have a whistleblowing policy you should put one in place as soon as possible.

If you wait until a whistleblowing complaint is made, you might not be as prepared as you could be to handle it. In some cases you might also miss the opportunity to deal with the situation.

Creating a policy could help you:

- better recognise whistleblowing disclosures
- handle them in a fairer and more consistent way
- identify the ways staff can raise concerns safely outside of their line managers
- reassure your staff that you will listen to and protect whistleblowers

If your organisation has handled a disclosure effectively in the past, you could use that to:

- help decide how to manage any disclosures in the future
- help create a whistleblowing policy

[Find out more about having a whistleblowing policy](#)

## **If someone raises a grievance**

If someone raises a grievance, you should follow the correct grievance procedure.

If you think a grievance might contain a whistleblowing disclosure, you should check with the person who raised it.

If they are making a disclosure as well as raising a grievance, you might need to follow both the grievance procedure and whistleblowing procedure.

Someone might try to make a disclosure but raise a grievance by mistake. If this happens, you should check there is nothing in their complaint they want to address through a grievance procedure. If there is not, you should confirm this in writing, for example, in a letter or email. You should explain the grievance procedure has ended and been replaced by your whistleblowing procedure.

[Find out more about a formal grievance procedure](#)

## **If the concern is a personal problem**

You might find your employee or worker's concern is a personal problem and does not fall within whistleblowing law. You should still try and find a way to resolve it.

Before dealing with the problem another way, make sure the concern is not whistleblowing.

If you think the concern is not a whistleblowing disclosure, explain this to the person who raised it. This is so they can make their disclosure to someone else if they still think it is whistleblowing.

[Find out more about dealing with a problem raised by an employee](#)

## **Take the disclosure seriously**



Always take whistleblowing disclosures seriously.

If you have a policy, follow the correct procedures and:

- listen to any concerns that your staff have raised
- consider what evidence might be available to support the concern
- reassure the whistleblower that you will keep their identity confidential
- reassure the whistleblower they will not suffer any detriment for raising concerns
- try and answer any questions the whistleblower has and explain why you cannot answer them if not
- keep the whistleblower informed about the progress of any investigation into their disclosure
- provide feedback to the whistleblower after any investigation, explaining if action has been taken

You should also train managers on whistleblowing procedures and how to respond to disclosures.

## **Make sure the whistleblower does not experience detriment**

You must not cause an employee 'detriment' if they make a disclosure. Detriment means someone experiences one or both of the following because they made a disclosure:

- being treated worse than before
- having their situation made worse

Examples of detriment could be:

- reducing their hours
- causing them to experience [bullying](#)
- causing them to experience [harassment](#)
- turning down their training requests without good reason

## **Vicarious liability**

If someone is bullied or harassed because they made a disclosure, this could be detriment. It might be treated as if carried out by:

- the employer
- the person who carried out the bullying or harassment
- both the employer and the person

This could make you responsible for their actions. This is known as 'vicarious liability'.

It could also be vicarious liability if someone is bullied or harassed by a person who does not work with them. For example, a family member of the employer or a contractor.

[Find out more about vicarious liability](#)

## **Non-disclosure agreements**

As an employer, you might use a non-disclosure agreement (NDA) to stop someone who works for you from sharing information.

By law, having a non-disclosure agreement in place cannot stop someone from whistleblowing.

[Find out more about non-disclosure agreements](#)

## Get more advice and support

If you have any questions about whistleblowing you can contact:

- [the Acas helpline](#) – for more advice on whistleblowing and resolving problems at work
- [Protect](#) – a UK whistleblowing charity which offers free legal advice and supports employers to develop best practice whistleblowing arrangements
- [the National Guardian's Office](#) – for advice on speaking up in the NHS

Acas also offers [tailored support for employers](#) to address specific challenges in an organisation.

## 5. Having a policy

It's a good idea for your organisation to have a policy that covers whistleblowing.

A policy can help show:

- staff the most effective way to raise their concerns when making a disclosure
- how managers should respond

As an employer you should support everyone to follow the whistleblowing policy. You should:

- share the policy across the whole organisation
- regularly review it
- use it as the basis for any whistleblowing training for managers
- show it to and discuss it with staff regularly
- include it in any employee induction process

If your organisation has any recognised trade unions you should work with them when developing and reviewing any policy. You should also check if your organisation has a joint agreement with the trade unions that requires you to do this.

It's also important to make sure your organisation has a culture where people:

- trust their management
- feel safe and encouraged to speak to them about serious concerns

## What a whistleblowing policy should include

A whistleblowing policy should cover:

- what whistleblowing is and how it differs from a grievance
- how it can affect employees and managers
- who the point of contact is in the organisation for whistleblowing queries
- how an employee should raise a whistleblowing disclosure
- a statement making clear the organisation wants to encourage all staff to make disclosures to them when they have concerns
- how the organisation will not tolerate whistleblowers experiencing detriment because they raised a concern
- how the organisation will investigate and respond to disclosures
- what whistleblowing support is available to staff
- how the organisation is open and trained to deal with whistleblowing

If you need support creating a whistleblowing policy, it's a good idea to [get legal advice](#).