



AN RIALTÓIR CÓGAISÍOCHTA  
THE PHARMACY REGULATOR

# A Guide to the Protected Disclosures Act, 2014

## What is a Protected Disclosure?

The purpose of the Protected Disclosures Act is to encourage the reporting of serious wrongdoings in the workplace by providing protection for employees who wish to do so. For the disclosure of information to be protected, it must be information which in the reasonable belief of the worker, shows a relevant wrongdoing (see below) and came to the attention of the worker during the course of their employment. The motivation for making the disclosure however, does not affect the determination as to whether the disclosure is protected.

The Pharmaceutical Society of Ireland (PSI) is a body which has been prescribed by the Minister for Public Expenditure and Reform to receive disclosures about wrongdoings relating to the regulation of pharmacists and pharmacies, including our responsibility for supervising compliance with the Pharmacy Act 2007. The purpose of this document is to provide information to persons who may wish to make a disclosure in relation to a wrongdoing that falls within the remit of the PSI.

Further details about the role and functions of the PSI are available on the home page of the PSI's website.

<http://www.thepsi.ie/gns/home.aspx>

## What is Relevant Wrongdoing?

The definition of relevant wrongdoing is broad. It includes wrongdoings that have occurred, are ongoing, or which may occur. Relevant wrongdoings include the following:

- The commission of an offence;
- The failure to comply with a legal obligation other than one arising under the worker's contract;
- A miscarriage of justice;
- Endangering the health and safety of any individual;
- Damage to the environment;
- Unlawful or improper use of the funds or resources of a public body or other public monies;
- Any act or omission by or on behalf of a public body that is oppressive,

discriminatory grossly negligent or constitutes gross mismanagement;

- Any information that would tend to show that any of the above matters has been or may be concealed or destroyed.

### Who can make a protected disclosure?

The Act protects workers in all sectors. The concept of 'worker' is very broad and includes employees (permanent and temporary), contractors, trainees, agency staff and former employees.

### When is a disclosure to the PSI protected?

A disclosure may be made to the PSI by a worker who is employed by another organisation, and who is not an employee of the PSI, where that worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true and that the relevant wrongdoing falls within the description of matters in respect of which the body is prescribed. This provision enables persons not employed by the PSI to bring matters of concern in relation to pharmacists and pharmacies to the attention of the PSI.

### Who else can receive protected disclosures?

Disclosures can also be made to the persons set out below. Different requirements must be satisfied in order for the disclosure to be protected depending on the category of person to whom the disclosure is made:

1. Disclosure to an employer or other responsible person (Section 6).
2. Disclosure to Relevant Minister (Section 8).
3. Disclosure to legal adviser (section 9).
4. Disclosure to any other person (section 10). For example, such a disclosure could be made where a disclosure for the purposes of section 7 has been made.

A disclosure made by a worker to any third party will be protected if certain requirements are satisfied. These requirements are as follows:

- I. The worker must reasonably believe that the information disclosed and any allegation contained in it is substantially true;
- II. The disclosure must not be made for personal gain;
- III. The disclosure is in all the circumstances reasonable (see below).

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

- At the time of making the disclosure, the worker reasonably believes that he/she will be subject to penalisation by his/her employer if the disclosure was made in the manner set out at (i) to (iii) above; or
- In a case where there is no prescribed person in relation to the relevant wrongdoing and the worker reasonably believes that it is likely that evidence in relation to the wrongdoing will be destroyed/concealed if the disclosure is made to an employer or other responsible person; or
- The worker has previously made a disclosure of substantially the same nature in the manner set out at (i) to (iii) above; or
- The relevant wrongdoing is of an exceptionally serious nature.

In determining whether the disclosure is in all the circumstances reasonable, regard shall be had to a number of factors including identity of the person to whom the disclosure is made, the seriousness of the relevant wrongdoing, whether the wrongdoing is continuing or likely to occur in the future, outcome of previous disclosures, and whether the disclosure is made in breach of a duty of confidentiality.

### Retrospective application:

The Act applies to disclosures made before or after the commencement of the Act, namely 15th July 2014.

### Protection:

The legislation gives a variety of protections to persons making protected disclosures or who may have suffered harm as a result of a protected disclosure made by another person.

1. Protection from dismissal;
2. Protection from penalisation / threat of penalisation by employer;
3. Right to take civil proceedings where suffer detriment as a result of the making of a protected disclosure;
4. Protection from Civil Liability;
5. Protection from Criminal Liability;
6. Protection of the identity of the maker of protected disclosure.

The last protection is of particular relevance in relation to the investigation of concerns and complaints by the PSI. A person who receives a protected disclosure or a person to whom such a disclosure is referred in the performance of that person's duties must take all reasonable steps to avoid disclosing to another person any information that might identify the person making the protected disclosure. A failure to comply (i.e., take all reasonable steps not to disclose) is actionable by the person by whom the protected disclosure was made if that person suffers any loss as a result.

### Protection does not apply if:

- a. The person to whom disclosure made believes that person making disclosure does not object to their identity being revealed;
- b. The person to whom disclosure is made believes that disclosing the identity is necessary for the effective investigation of the relevant wrongdoing, to prevent serious risk to the security of the State, public health or public safety, the prevention of crime or prosecution of a criminal offence, or if it is in the public interest. In order to properly investigate a complaint in relation to a pharmacist or pharmacy the PSI may be obliged under the Pharmacy Act or under the principles of natural justice to reveal the identity of a person who makes a protected disclosure. For further information please see the PSI guide to making complaints available on our website.

### To whom should I make my disclosure?

Under the Protected Disclosures Act 2014 (Section 7(2)(2)) Order 2014 the Registrar of the PSI has been prescribed as the person to whom protected disclosures should be made.

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## Disclaimer

The information provided above is not a legal interpretation of the Protected Disclosures Act 2014. The Pharmaceutical Society of Ireland cannot advise you on whether the disclosure you may intend to make, whether to it, or any other body specified in the legislation, will qualify as a protected disclosure.