

## S9.A Guidance on Whistle-Blowing

Allegations, suspicions, knowledge and concerns about the abuse of a child which meet the threshold must be reported to statutory authorities and Church authority (if the allegation related to a cleric or religious) (see guidance R1.A).

This guidance relates to concerns about malpractice in child safeguarding.

All staff and volunteers ministering or volunteering within the Catholic Church in Ireland have an individual responsibility to bring matters of concern about any dereliction of duty to safeguard children, to the attention of the appropriate person within the Church or statutory authorities. This could be the parish priest, religious superior, bishop, provincial and/or relevant agency managers. Although this can be difficult to do, it is particularly important where the welfare of children may be at risk.

You may be the first to recognise that something is wrong, but you may not feel able to express your concerns out of a feeling that this would be disloyal to colleagues, or you may fear harassment or victimisation. These feelings, however natural, must never result in a child or young person continuing to be unnecessarily at risk. Children need an advocate to safeguard their welfare.

**Don't think, 'what if I'm wrong?' Think, 'what if I'm right!'**

### 1. *What is whistleblowing?*

Whistleblowing can be defined as 'raising concerns about wrong-doing or misconduct within an organisation or within an independent structure associated with it'. It differs from raising concerns about allegations of abuse.

The concern could relate to:

- a breach of the Church Body's child safeguarding procedures
- practice which falls below the standards set out in the safeguarding standards
- a breach of the law
- failure to comply with legal obligations
- a possible miscarriage of justice
- a Health & Safety risk
- misuse of public money
- corruption or unethical conduct
- deliberate concealment of any of these matters

Those in ministry within the Church have certain common law confidentiality obligations to their Church authority. However, in a limited set of circumstances, whistleblowing may override these obligations if a person has information which they believe will not be addressed properly within the Church.

This guidance sets out the circumstances under which these disclosures may lawfully be made.

## 2. Legislation underpinning whistleblowing

There is legislation in both jurisdictions related to whistleblowing; and this applies to clerics, religious, and employees of Church bodies, as well as to agency workers in certain circumstances; to contractors and consultants engaged on contract by the Church body; and to trainees, temporary workers and those on work experience with the Church body. In the Republic of Ireland this definition also includes volunteers.

### *Republic of Ireland*

In the Republic of Ireland the legislation is called the Protected Disclosures Act 2014, which has been amended by the Protected Disclosures Amendment Act 2022.

The Protected Disclosures Act 2014 and the Amendment Act of 2022 aims to protect people who raise concerns about possible wrongdoing in the workplace. These Acts, are often called the whistleblower legislation. They provide for redress for those defined as 'workers' who are penalised for having reported possible wrongdoing in the workplace.

'Worker' means an individual working in the private or public sector who acquired information on relevant wrongdoings in a work-related context and 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,
- (i) an individual who acquires information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process referred to in paragraph (h)), and
- (j) an individual who is deemed to be a worker by virtue of subsection (2)(b), and any reference to a worker being employed or to employment shall be construed accordingly.”,

Under the Acts, a protected disclosure is made by church personnel (identified as worker above) who discloses relevant information in a particular way. Information is relevant if it came to the Church personnel's attention in connection with their ministry, volunteer role, employment or recruitment process and they reasonably believe that it tends to show wrongdoing.



Wrongdoing is widely defined in the Act and includes bullet points below:

- Criminal offences
- Failure to comply with a legal obligation (other than a workers contract of employment)
- Miscarriage of justice
- Endangerment of health and safety
- Damage to the environment
- Unlawful or improper use of public funds
- Oppressive, discriminatory or negligent behaviour by a public body
- Breaches of EU law
- Concealing or destroying evidence of wrongdoing

### *Northern Ireland*

In Northern Ireland the law that covers whistleblowing is The Public Interest Disclosure (Northern Ireland) Order 1998, (as amended in October 2017). Whistleblowing is more formally known as 'making a disclosure in the public interest'. The law states the importance of disclosing concerns, knowing that you are protected from losing your job and/ or being victimised as a result of what you have uncovered and made public.

An easy-to-read guide to the effect of this legislation is available to download from [www.economy-ni.gov.uk/sites/default/files/publications/economy/public-interest-disclosure-guidance.pdf](http://www.economy-ni.gov.uk/sites/default/files/publications/economy/public-interest-disclosure-guidance.pdf).

### *Canon Law*

Vos estis lux mundi includes specific provisions in relation to protecting adults who report abuse under Article 4 which states:

§ 1. Making a report under Article 3 shall not constitute a breach of official secrecy.

§ 2. Except as provided in Canon 1390 CIC and Canons 1452 and 1454 CCEO, prejudice, retaliation, or discrimination for filing a report is prohibited and may constitute conduct under Article 1 § 1(b).

§ 3. No constraint of silence may be imposed on the person making a report, the person claiming to have been offended, and witnesses regarding the content of the report, subject to the provisions of Article 5 § 2.

### **3. Raising a concern of malpractice (In law this is called a disclosure)**

For Church personnel and employees raising a concern/disclosure of malpractice, to be protected by the law, the concern/disclosure must be made to the right person and in the right way. If someone makes a qualifying disclosure in good faith to a Church Authority, or through Church procedures which the Church Authority has authorised, the law protects that person.

It is important to:

- Voice any concerns, suspicions or uneasiness as soon as possible. The earlier a concern is expressed the sooner and easier action can be taken;

- Try to pinpoint exactly what practice is concerning and why;
- Approach your immediate superior/supervisor/manager;
- If your concern is about your immediate superior/supervisor/manager, please contact your DLP, the statutory services or the National Board;
- Confirm your concerns with factual information (dates, times details, history, giving names, dates, locations and any other relevant information) in writing;
- You are not expected to prove the truth of your disclosure, but you need to demonstrate sufficient grounds for concern.
- Seek a satisfactory response in writing; do not let matters rest, if you do not receive a response within a reasonable timeframe, write again seeking a written response. A failure to respond should be included in any further disclosure to the statutory authorities or the National Board.
- Follow up if the person to whom you reported has not responded within a reasonable period of time, and if that follow up is not acted upon, report the matter to the relevant statutory authorities.

#### *4. Required response by relevant Church authority*

##### *Reporting Mechanisms for Church bodies(ROI only)*

All Church bodies with 250 or more employees must establish internal channels for their workers to report wrongdoing. From 17 December 2023, this requirement will apply to all Church bodies with 50 or more employees.

- The internal channel should be designed and operated in a secure, GDPR compliant, manner that ensures the confidentiality of the reporting person and any other person(s) named in the report.
- Designation of a person or function to operate the channel, who will maintain communication with the reporting person, follow-up on the report and provide feedback to the reporting person.
- This person or function should have sufficient independence and authority within the organisation to carry out the functions specified in the Act.
- Persons operating the internal channel should be adequately trained in the handling of reports.
- The Church body must promote the existence of the internal channel and ensure workers have access to the procedures under which it operates.
- Church bodies can outsource the internal channel function, if they wish.

##### *Response by the Church authority*

- The Church person to whom the disclosure is made should acknowledge receipt in writing within 7 days of receiving it.
- Diligent follow up must then be taken by the Church body.
- Relevant information (including feedback on actions taken or planned to be taken) on the nature and progress of any enquiries resulting from the concern must be shared with the person who made the disclosure after 3 months and further feedback provided if requested every 3 months. It is acknowledged that confidential sensitive data cannot be shared so the response should include general information about internal inquiries and statutory referrals made.
- The Church person to whom the disclosure is made should keep detailed notes of the disclosure, action taken, who was consulted and the outcome of the inquiries.

## 5. Protection of whistleblower

- Anyone who raises a concern through these whistleblowing procedures in good faith must be protected from harassment or victimisation.
- Whilst reporting may remain confidential, in most instances this cannot be guaranteed. Everyone has the right to know who makes a complaint against them. This should not deter one from raising the concern, but is a reminder of the importance of providing evidence to support the concern.
- No action will be taken against the whistleblower if the concern proves to be unfounded and was raised in good faith.
- Any act of penalisation that causes detriment to a reporting person is prohibited. Penalisation includes dismissal and also any other form of unfair treatment, such as suspension, reduction in wages or hours, demotion and transfer of duties as well as intimidation and harassment.
- Penalising a reporting person is a criminal offence.
- Reporting persons who suffer detriment can seek compensation at the Workplace Relations Commission (ROI) or the courts.
- Reporting persons are protected from any civil or criminal liability for reporting confidential information, provided it is done so in accordance with the law.
- Non-disclosure agreements cannot be used to prevent a person reporting a wrongdoing.
- Employers and regulators must keep the identity of the reporting person confidential.

## 6. Self-reporting

There may be occasions when a member of staff or a volunteer has a personal difficulty, perhaps a physical or mental health problem, which they know to be impinging on their professional competence. Staff and volunteers have a responsibility to discuss such a situation with their line supervisor/superior/manager so that professional and personal support can be offered to the member concerned.

## 7. Disclosure to an external person, other than statutory bodies, government officials or the National Board.

A disclosure made to an external person, for example, a journalist, may be a protected disclosure if it meets a number of conditions:

- You must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true
- You must not make the disclosure for personal gain
- For making of the disclosure in public in all the circumstances, to be reasonable, at least one of these conditions must be met:
  - At the time you make the disclosure you must reasonably believe that you will be penalised if you make the disclosure to the Church authority, statutory personnel or a government minister, or National Board.
  - Where you reasonably believe that it is likely that the evidence will be concealed or destroyed if you make the disclosure directly to the Church authority, statutory body or National Board
  - You have previously made a disclosure of substantially the same information to the Church authority, statutory personnel, government minister or National Board.

- The wrongdoing is of an exceptionally serious nature

The assessment of what is reasonable, takes account of, among other things: the person the disclosure is made to, the seriousness of the wrongdoing; and whether any action was taken in cases where a previous disclosure was made. In the Republic of Ireland if a person feels that they do not want to report to their employer or reporting to their employer has not worked, they can report to a regulator, known as a “prescribed person”.

A list of prescribed persons can be found at: [www.gov.ie/prescribed-persons](http://www.gov.ie/prescribed-persons).

They can also report to the Protected Disclosures Commissioner who will refer the report to a suitable prescribed person. See: [www.opdc.ie](http://www.opdc.ie) Public disclosure.

If all other options fail, workers can make a public disclosure. Such disclosures are subject to more stringent conditions to qualify for protection however.

# Nurturing a Culture of Safeguarding Guidance for S9

## S9.A Template 1: Whistle- Blowing Record

<b>Section 1 – to be completed by person raising a concern of malpractice</b>	
Name of Person raising Concern	
Name of Person and Church body against whom the Concern is being raised	
Brief Details (factual) of the Concern	
Date and person to whom the concern was raised	
<b>Section 2 – Response by recipient of Concern</b>	
Date Concern was reviewed and assessment of facts  <ul style="list-style-type: none"> <li>• Concern requires further inquiry</li> <li>• No further action (state reasons)</li> </ul>	
Details of action taken  Include: <ul style="list-style-type: none"> <li>• Any referral to statutory agency</li> <li>• Consultation with National Board</li> <li>• Restrictions on ministry</li> <li>• Report to Holy See</li> </ul>	
Date and details of response given to person who raised concern	

