

# Telling the truth about the whistleblowers Bill



*Government using EU Directive to row-back existing protections including by only allowing whistleblowers to go public in an emergency*

by **Cillian Doyle and David Langwallner**

**S**inn Féin is seeking cross party support for a significantly new and tightened Whistleblowing (Protected Disclosures) Act. People Before Profit and the Social Democrats have quietly intimated, in principle, their support for Sinn Féin’s proposal.

This article addresses why this is necessary given that the government is introducing a new amendment bill of its own.

Ireland’s existing Protected Disclosures Act, enacted almost a decade ago, aimed to protect people who raised concerns about possible wrongdoing in the workplace. Under the Act, you make a protected disclosure if you are a worker, and you disclose relevant information in a particular way.

Information is relevant if it came to your attention in connection with your work and you reasonably believe that it tends to show wrongdoing, which the act defines as:

- Commission of criminal offences
- Failure to comply with legal obligations
- Endangering the health and safety of individuals
- Damaging the environment
- Miscarriage of justice, misuse of public funds
- Oppressive, discriminatory, grossly negligent, or grossly mismanaged acts or omissions by a public body
- Concealment or destruction of information about any of the above wrongdoing

The government must now update the existing act by transposing the mandatory parts of the EU Whistleblowing Directive by 15 December or face fines. Ireland previously incurred a €2 million fine from the European Court of Justice for failing to enact the Anti-Money Laundering Directive on time.

All indications are it doesn’t plan a repeat performance and its bill is currently being railroaded through the pre-legislative process.

The timing for this is also illustrative. With budget time upon us, most eyes have been

transfixed on issues of tax and expenditure and away from concerns like whistleblowing.

The government is purporting to tighten the existing Protected Disclosures Act (2014), whilst satisfying the mandatory provisions of the EU Directive. And yet they are weakening existing national standards, which is in radical violation of article 25.2 of the Directive.

There are sins of omission and commission. Let’s start in reverse with two provisions which cut to the core of the kibosh.

## Sins of Commission

A whistle-blower can only complain externally if there is a defined issue of emergency defined as “in extremis”, an inelegant transposition from the EU Directive.

If there is no such emergency, then the whistle-blower is confined to first exhausting the internal reporting process, before going external. In reality a long and protracted, highly stage-managed process should ensue, meaning a whistle-blower is likely to throw in the towel before ever reaching the point of going external.

## Sins of Omission

Whereas under the current act a Protected Disclosure can be made directly to the relevant Minister, the new bill plans to create a Protected Disclosures Office, a kind of Ombudsman for dealing with such matters. A provision which would allow the Minister to ‘see no evil, hear no evil, speak no evil’.

A protected disclosure which could be characterised as arising from an ‘interpersonal

grievance’, could be dismissed. This would seem to offer a handy ‘get out of jail’ clause where situations of bullying, harassment or an unsafe work environment arose.

Aside from these retrograde steps there are things the bill should do.

- External whistleblowing should be elective and subject to limited restraints. It is unrealistic to trust corporate bosses or civil service bureaucrats to achieve a just outcome.
- There should be access to free legal aid and psychological services. In this respect, in line with other worldwide statutes, the whistleblower needs interim financial relief throughout the process, such is granted under the Sarbanes Oxley Act in the US.
- There should be proper protections from penalisation, and the burden of proof should rest on the employer.
- There should not be caps on awards, and there should be financial incentives for those working in finance to reveal wrongdoing when they see it. Think: Tracker Mortgage scandal, Davys, mis-selling of mortgages, etc .
- The categories of whistle-blowers should be extended to include volunteers, associated persons, and bellringers. And journalists.
- The need to protect journalists is increasingly real. In the UK, the Tory Party’s swivel-eyed Home Secretary Priti Patel, is currently seeking to introduce a new bill penalising journalistic whistle-blowers from making public-interest disclosures on pain of criminal sanction. This calls for a kind of pre-emptive defensive manoeuvre. As Orwell once said, “in times of universal deceit, telling the truth becomes a revolutionary act”. **LE**

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