

Your Ref: PAC32-I-939

18 June 2018

Ms Margaret Falsey
 Committee Secretariat
 Committee of Public Accounts
 Leinster House
 Dublin 2

Dear Ms Falsey

I refer to your letter dated 29 May 2018 in relation to the Committee's meeting of 24 May 2018. In that letter you advised that the members had discussed the frameworks in place for investigations of protected disclosures and specifically the independence of internal investigations carried out. In that context, you wrote to this Department regarding the Protected Disclosures Act 2014 and associated guidance provided by DPER for public bodies on the management of protected disclosures.

The Protected Disclosures Act 2014 provides robust statutory protections for workers in both the public and private sectors against the real or potential penalisation by their employers where they have brought concerns about wrongdoing in the workplace to light. The Act provides for a "stepped" disclosure regime in which a number of distinct disclosure channels are available – internal, "regulatory" and external – through which a worker can raise a concern and be protected from reprisals. Internal reporting to the employer in the first instance is encouraged under the Act by having progressively higher evidential thresholds for reporting to a regulator and externally. It is also in line with best practice internationally (e.g. OECD, Transparency International, Council of Europe) that disclosers should be facilitated and encouraged to disclose to internal reporting channels in the first instance.

All public bodies are required to establish and maintain procedures for the making and handling of protected disclosures under section 21 of the Act. The statutory Guidance issued by the Minister is for the purpose of assisting public bodies in the performance of those functions. Section E 9.2.1 of the Guidance states that *"It should be possible in most, if not all cases, for workers to make protected disclosures internally to their employer. While public bodies cannot oblige workers to make a protected disclosure internally before making it externally, the Procedures should encourage workers to do so"*. It further states that *"If possible the disclosure recipient(s) should include individuals who would normally be viewed as being part of "independent" functions typically outside any part of normal line management responsibility. In any event, the disclosure recipient(s) should be trained in the Procedures, and should be persons of authority within the public body"*.

Internal procedures produced by public bodies should reflect the principles outlined in the above Guidance. The Guidance states (at section E 15.8) that *"public bodies should consider including in the Procedures a general framework for investigation procedures, with a set of guiding principles to ensure some consistency in terms of approach"*. Such a framework, if implemented effectively, should enable actual or potential conflicts of interest to be managed, and avert the risk of a person who was a subject of a disclosure becoming involved in an investigation of the disclosure, which would be contrary to natural justice and fair procedures. However, the framework should not be overly prescriptive, as this

may impede the public body's ability to respond flexibly and in a responsive way to disclosures of wrongdoing.

However, it will not always be possible or desirable for an organisation to carry out an investigation internally. As set out in the letter to the Committee dated 11 May 2018 by Paul Quinn, Chief Procurement Officer of the Office of Government Procurement, a Framework for the Receipt and Investigation of Protected Disclosures has been established which provides for independent investigation and confidential recipient services to be availed of by public bodies, where this is required.

It should also be noted that the Act creates an incentive for public bodies to ensure that investigations into protected disclosures are both independent and effective and seen to be so, as it provides other disclosure channels which the discloser may avail of if they consider that this has not been the case.

I would also like to draw the Committee's attention to the recently published draft "Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law", which is a draft measure to strengthen whistleblower protection at EU level. While this is a draft measure and will be subject to negotiation, it is notable that it requires workers to use internal channels for reporting in the first instance, with certain limited exceptions.

Finally, the Protected Disclosures Act is subject to a statutory Review, which is almost complete and will be published shortly. This will review the operation of the Act since its commencement in July 2014 and has included a public consultation process in which 25 submissions were received, including from a number of public bodies. A report will be made by the Minister to each House of the Oireachtas by early July 2018 on the findings of the review and the conclusions drawn from those findings.

I hope that this assists the Committee in its consideration of the matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Robert Watt', written in a cursive style.

Robert Watt
Secretary General