

Opening statement to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach

By John Devitt, Chief Executive, Transparency International Ireland

27 May 2021

Thank you, Chairman and fellow Committee members, for inviting us to talk with you about the issues encountered by whistleblowers and related challenges faced by organisations in Ireland.

I am joined by Lorraine Heffernan, acting Legal Counsel for Transparency International Ireland and Managing Solicitor of the Transparency Legal Advice Centre; Stephanie Casey, Programme Manager at TI Ireland responsible for our Integrity at Work programme; and Dr Lauren Kierans BL, Lecturer in Law at Maynooth University and an Associate of TI Ireland. Their biographies have been included below and we would be happy to answer any questions you might have.

I should firstly explain who we are and the work we do with whistleblowers as well as organisations. Transparency International Ireland (or TI Ireland) was founded in 2004 and is a member of the Transparency International movement of anti-corruption non-governmental organisations, with its international secretariat in Berlin. We engage in lobbying, research and advocacy aimed at addressing the risk of corruption and in 2009 began lobbying for what became the Protected Disclosures Act.

In 2011, TI Ireland launched the country's only free-phone helpline for whistleblowers and witnesses of wrongdoing. In 2016, we established an independent law centre, the Transparency Legal Advice Centre which provides free legal advice to people making disclosures of wrongdoing, and also launched Integrity at Work, a programme aimed at helping organisations create safe working environments for people to speak up.

Since we launched our Speak Up Helpline, we have supported over 1,850 clients, of which around one in three have been categorised as having made protected disclosures. We observed a 120% increase in the volume of calls to the Helpline after the 2014 Act was introduced. Of these, more than 100 clients have been referred to the law centre for free legal advice. Each client receives an average of more than 30 hours of free support, valued at €10,000 per client. In addition, 30 organisations have joined the Integrity at Work initiative, including 12 agencies sponsored by the Department of Justice and three Institutes of Technology sponsored by the Department of Education.

The work we do informs our analysis and recommendations to employers and government and is published in our biennial Speak Up Report. We have also gathered data through our Integrity at Work Survey which highlights some cultural as well as systemic issues that the Committee might find of particular interest.

Workers might gain some encouragement from the perhaps counterintuitive finding that most people blowing the whistle at work say that they did not suffer as a result. Of the 150 or so private sector employees that took part in our Integrity at Work survey in 2016 and that said that they had spoken up about wrongdoing at work, only 21% said their disclosures had a negative impact on them. In contrast, 28% said the outcome had been positive. This finding is similar to that highlighted in employee surveys in other jurisdictions. It suggests that most employers act responsibly. However, it would be unwise to take this statement at face value alone.

If one concludes that one in five workers are penalised for speaking up and translate that figure to the Irish workforce, it suggests that more than 30,000 people have suffered some type of detriment for blowing the whistle at some point in their careers.

Indeed, it only takes one person to be made an example of for their co-workers to be silenced, or one nurse to remain silent for patients' lives to be put at risk. Conversely, we can see the role just one public servant can have in exposing malpractice to understand the importance of whistleblowing in making our public services more open and accountable.

The benefits of whistleblowing are increasingly recognised and according to the Association of Certified Fraud Examiners, 40% of all cases of fraud are exposed through tip-offs from staff. The evidence in favour of protecting them from reprisal by their colleagues or employers is incontrovertible, and it is the reason why Ireland and other EU Member States have begun enacting and implementing stronger legal safeguards for whistleblowers.

Despite the introduction of these safeguards, whistleblowers continue to bear the overwhelming burden and risk of speaking up. According to our research, workers lose more than 90% of protected disclosures claims brought before the WRC. Work by Professor Kate Kenny and others, shows how whistleblowers in certain sectors such as banking can find it impossible to find work in their given profession again. The impact of reprisal on family, physical wellbeing, and the mental health of whistleblowers can be devastating.

It should be noted too, that it is the fear of futility as much as the fear of reprisal that serves to deter people from speaking up. It might not be surprising to hear that one of the most common sources of complaints to our Helpline is the failure to investigate wrongdoing.

When an employer or regulator fails to address a concern, it exposes the worker to reprisal by allowing their colleagues infer that the worker is in some way unreliable or untrustworthy. Indeed, the UK courts have found that a failure to investigate may be considered a form of whistleblower detriment. When the employer's default position is to challenge a legal ruling in favour of a whistleblower, it risks prolonging unnecessary hardship for the whistleblower, courting public controversy and undermining public confidence in that institution.

The difficulties that employers face in dealing with protected disclosures should also be taken seriously. They often struggle to meet the expectations of workers who will often reasonably ask that they be kept informed of the progress of investigations. They might not be aware that a whistleblower is being penalised. Balancing the rights of whistleblowers and respondents can be difficult, and those accused of wrongdoing and their representatives will often mount stiff challenges to assessments or investigations. Employers might not have the resources to investigate or have the necessary skills or knowledge to do so. While State bodies often find themselves investigating concerns only to find that an investigation is already underway by different agency.

More guidance and support for employers in dealing with protected disclosures will help as will forthcoming changes to the law; but training, education and public awareness are also essential. Our research suggests that only 30% of Irish private sector employers have any procedures in place and it is essential that organisations of all sizes and sectors, adopt policies and procedures in preparation for the transposition of the EU Whistleblowing Directive later this year.

You will see that we have made recommendations to government in overcoming many of these challenges and we are happy to discuss the solutions we offer or propose. Thank you again for your time.

Links to Additional Resources

- Speak Up Report, 2020. Analysis of the Protected Disclosures Act 2014 in Practice on page 25; Recommendations to Government on page 44
<https://transparency.ie/resources/whistleblowing/speak-report-2020>
- Submission on the transposition of the EU Whistleblowing Directive, 2020
<https://transparency.ie/resources/submissions/2020-submission-transposing-eu-whistleblowing-directive>
- Speak Up Report, 2017. Integrity at Work Survey Results on page 36
<https://transparency.ie/resources/whistleblowing/speak-report-2017>
- Submission on the review of the Protected Disclosures Act 2014, 2017
<https://transparency.ie/resources/submissions/submit-protected-disclosures-act-review>
- Speak Up Report, 2015
<https://transparency.ie/resources/whistleblowing/speak-report-2015>
- Speak Up Safely Guide, 2015/2020
https://transparency.ie/sites/default/files/20.01_speak_up_safely.pdf
- An Alternative to Silence, 2010
<https://transparency.ie/resources/whistleblowing/alternative-silence>
- More information on TI Ireland and the Integrity at Work programme is available at www.transparency.ie and www.integrityatwork.ie

Witness Biographies

Stephanie Casey manages the Integrity at Work (IAW) programme at Transparency International Ireland. She is responsible for the development and delivery of IAW member support including training, policy guidance and events as well as communicating the aims and vision of the initiative to a wide range of audiences and stakeholders. Stephanie has worked in the non-profit sector for over eighteen years, previously holding senior managerial roles in Oxfam Ireland, the Irish Cancer Society and Arthritis Ireland. Stephanie holds a first-class MA in Ethics from Dublin City University.

John Devitt is the founder and Chief Executive of TI Ireland. Since founding TI Ireland in 2004, he has led research and successfully lobbied for new whistleblower protection, lobbying regulation, and stronger corruption controls in Ireland. In 2011, John established TI Ireland's Speak Up Helpline and in 2016 co-founded the Transparency Legal Advice Centre. He is also Chairperson of the Whistleblowing International Network and an Advisory Board Member of the Middlesex University Whistleblowing Research Unit. John holds a first-class MA in Ethics from Dublin City University.

Lorraine Heffernan is acting Managing Solicitor at the Transparency Legal Advice Centre. She holds a Bachelor of Civil Law Degree (University College Dublin, 1990) and trained with a top Dublin law firm to qualify as a Solicitor (Law Society of Ireland, 1994). Lorraine has pursued further studies in the area of Employment Law and further study with University of Limerick in Housing Law and Policy.

Lorraine has a track record in community work where she actively pursues her interests in systems development, compliance and risk assessment.

Dr Lauren Kierans is an expert in protected disclosures/whistleblowing law and a lecturer in law at NUI Maynooth. Her monograph ‘Whistleblowing and the Protected Disclosures Act in Ireland: Law, Rights and Policy’ will be published in early 2021 by Clarus Press. Lauren undertook her PhD, ‘An Empirical Study of the Purpose of the Irish Protected Disclosures Act 2014’ at the Whistleblowing Research Unit, Middlesex University, London.