



## External Whistleblowing Guide December 2015

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## **What is this Guide about?**

This Guide describes the approach taken by the Northern Ireland Authority for Utility Regulation (the Utility Regulator) if, as a worker in companies in the electricity, gas and water industries, you want to disclose certain concerns (see page 5) or wrongdoing to the Utility Regulator relating to the activities of companies or individuals operating in those industries.

It seeks to answer questions such as when to get in touch, who with and what assurances and protections there are for you if you want to make a disclosure.

## **What is whistleblowing?**

Whistleblowing is when you raise concerns about wrongdoing, risk or malpractice with someone in authority internally and/or externally. Whistleblowing can inform those who need to know about health and safety risks, potential environmental problems, fraud, corruption, cover-ups and many other problems. Workers are often best placed to identify deficiencies and problems and are sometimes the only way that such information comes to light. If the concern is raised early enough, it can help to avoid serious damage being done so the importance of the role of workers as the “eyes and ears” of organisations cannot be overstated.

The Public Interest Disclosure (NI) Order 1998 (PIDO) protects you if you ‘blow the whistle’ about certain types of wrongdoing. It mainly takes the form of amendments to the Employment Rights (Northern Ireland) Order 1996, and makes provision about the kinds of disclosures which may be protected; the circumstances in which such disclosures are protected and the persons who may be protected.

We expect openness, accountability and honesty throughout the utility industries. As a worker in the utility industries you may identify a need to raise issues of concern. In general, you should be able to make disclosures about wrongdoing to your employer so that problems can be identified and resolved quickly within organisations. You can raise a concern openly, confidentially or anonymously with your employer. If you raise a concern openly, your employer should ensure that you do not suffer any detriment or harassment as a result. It is not a requirement of PIDO legislation to provide confidentiality – in fact it encourages workers to raise their concerns openly - but a good whistleblowing policy will provide a confidential port of call and employers should respect any promise of confidentiality made. Your employer’s procedures should provide assurance that this will be the case. However, it may not always be possible to maintain confidentiality if this impedes the investigation. In such circumstances, it is vital that you are consulted and, if possible, your informed consent obtained. Your employer should also accept anonymously raised concerns and give a commitment that they will be acted upon. However there are disadvantages to anonymous disclosures around the extent to which investigations and tribunals may be impeded and it may not be possible to remain anonymous through the whole process.

Your employer should have internal procedures for handling whistleblowing including processes for maintaining your confidentiality to the maximum extent possible, for consulting with you and, where possible, gaining your consent prior to any action that could identify you and strategies for supporting you and ensuring you suffer no detriment or harassment when confidentiality is not possible or cannot be maintained. These internal procedures should normally be used in the first instance or adapted for the purpose of facilitating disclosures. We would expect these processes to be fully exhausted before recourse to this policy though in some cases it may still be appropriate for you to raise a concern using the procedures outlined in this Guide. Your employer should name the Utility Regulator in its internal whistleblowing policy and refer to this Guide as the body to which disclosures under PIDO are made.

The existence of the PIDO encourages employers to establish clearly defined processes for workers to raise issues with them in the first instance. There are significant benefits to an organisation in having internal whistleblowing procedures in place which are known and understood by workers;

- They help to deter malpractice; and
- They increase the likelihood of senior management being alerted to problems in time to prevent serious damage.

The provisions introduced by the PIDO protect most workers from being subjected to a detriment by their employer. If you are protected by the provisions, you may make a claim for unfair dismissal if you are dismissed for making a protected disclosure. If you are a contract worker but not an employee, you may not claim unfair dismissal. However, if the employer has terminated your contract because they made a protected disclosure, you may instead make a complaint that you have been subjected to a detriment.

### **Who is the Utility Regulator?**

The Utility Regulator is the economic regulator of the electricity, gas and water and sewerage industries in Northern Ireland. We are a non-ministerial government department set up to protect consumers by ensuring that the utility industries in Northern Ireland are regulated and developed within the strategic policy parameters set out by Ministers and in accordance with the relevant legislation. At the heart of our duties and functions is the protection of the interests of water, sewerage, gas and electricity consumers in Northern Ireland.

There may be instances where you feel that you can't raise a matter of concern or reported wrongdoing through internal procedures or are unhappy with the way your concern or reported wrongdoing was handled. As a result, you may decide that there is a need to raise the issue with us as a public interest disclosure. We take all such contacts very seriously and aim to deal with them promptly and discreetly. We recognise that raising such concerns is not easy for you.

This Guide describes how we aim to deal with those disclosures. You should not read this as an authoritative summary of the law in this area, but a practical guide for what to do if you feel it necessary to blow the whistle in respect of a company in the electricity, gas or water and sewerage industries.

### **What protection do I have if I come forward?**

Many workers are understandably concerned about the consequences of speaking out about their employer. The PIDO was created specifically to protect workers who report concerns which qualify for protection under it. There is further information available on the PIDO and the protection it offers on the Department for Employment and Learning's website at [www.delni.gov.uk/public-interest-disclosure-guidance](http://www.delni.gov.uk/public-interest-disclosure-guidance)

Certain kinds of disclosures qualify for protection ("qualifying disclosures"). Qualifying disclosures are disclosures of information which you reasonably believe tend to show one or more matters, including those listed below, is happening now, took place in the past, or is likely to happen in the future:

- a criminal offence;
- a breach of a legal obligation;
- a miscarriage of justice;
- a danger to the health or safety of any individual;
- damage to the environment; or
- deliberate covering up of information tending to show any of the above matters.

You do not need to be certain that malpractice is occurring or have to provide evidence or proof of wrongdoing. It is best to raise the concern as early as possible, even if it is only a suspicion, to allow the matter to be looked into promptly. PIDO protection applies if, at the time you raised your concern, you had an honest belief that malpractice had occurred, is occurring or is likely to occur in the future. That belief does not have to turn out to be correct.

### **What disclosures can we deal with?**

The PIDO prescribes UR as the person to whom disclosures in respect of the following should be made:

- The regulation, transmission, distribution and supply of electricity, and activities ancillary to these matters;
- The regulation of the conveyance, storage and supply of gas through pipes, and activities ancillary to these matters; and
- The regulation of the abstraction, treatment, distribution and supply of drinking water to the public and activities ancillary to these matters

- The regulation of the collection, treatment and disposal of wastewater and sewage sludge and activities ancillary to these matters

### **How will we handle disclosures that we can't deal with?**

It may be that we do not have direct powers to deal with your disclosure and that it should more properly be dealt with by another body. Each matter raised with us will, before any investigation begins, be reviewed by us to establish who is properly empowered to deal with it.

Where a matter properly falls within the powers of another body, we will provide you with contact details to allow you to take the matter up with them directly.

We will treat any disclosures received sensitively and, as far as we are able, confidentially. You should be aware that we may not be able to take action against a company in all instances.

### **Can you give me some examples of disclosures?**

Some of the areas where you may have concerns which could be reported to us policy include:

- Breach of the conditions of a company's Licence;
- Criminal offences;
- Failure to comply with a legal obligation or statutory duty
- Anti-competitive practices; or.
- Improper conduct or unethical behaviour

### **What if I have a complaint about my utility company?**

This Guide is for workers in the utilities companies who decide to report concerns relating to their employer that we are able to deal with under PIDO.

If you are a customer of a utility company with a concern, the procedures for making a complaint are set out on our website at [http://www.uregni.gov.uk/customer\\_information](http://www.uregni.gov.uk/customer_information)

### **I have a question about PIDO. Where can I get advice?**

We can't provide legal advice or intervene in matters of employment relations, and have no powers to determine whether or not PIDO protection applies. However, we can direct you to those who will be able to offer you independent, confidential advice. In those circumstances, you may want to contact:

- Public Concern at Work which is an independent charity and leading authority on public interest whistleblowing. They can be contacted on 020 7404 6609, or by email: [helpline@pcaw.co.uk](mailto:helpline@pcaw.co.uk);

- a union representative; or
- a solicitor

### What information do you need?

Hard evidence - if you've got it - is clearly helpful, but it is not essential. However, we do ask that you provide us with as much detail (including specific events) as you can. This helps us to understand your concern properly and ensures we can take the appropriate action in response.

### Will I have to give my name?

We do not insist that you give us your name, but it is helpful to have it, together with other contact details, in case we need to get in touch. If you wish to remain anonymous we will treat you sensitively and we will do all we can to protect your identity. In such a situation, we would want to talk to you about how your anonymity can be protected. We will only disclose your identity with your consent or if directed to do so by a Court. You should bear in mind however that the progress of any investigation or subsequent action may be impeded and that some elements of an investigative process could lead to your identification.

### How do I contact the Utility Regulator with my concerns?

If you feel that you need to make a disclosure under the terms set out in this Guide then please do so to the directors as listed below.

<b>Networks: Compliance &amp; Operations</b>
Tanya Hedley
028 9031 6325
tanya.hedley@uregni.gov.uk

<b>Networks: Finance &amp; Assets</b>
Brian McHugh
028 9031 6623
brian.mchugh@uregni.gov.uk

<b>Markets: Retail</b>
Kevin Shiels
028 9031 6637
kevin.shiels@uregni.gov.uk

<b>Markets: Wholesale</b>
Jo Aston
028 9031 6344
jo.aston@uregni.gov.uk

In the very exceptional circumstance where you feel that it would not be appropriate to contact the relevant utility director, you may contact the **Director of Corporate Affairs**, Donald Henry, on 028 9031 6632 or by email at [donald.henry@uregni.gov.uk](mailto:donald.henry@uregni.gov.uk).

*Our postal address is:*

Queen's House  
14 Queen's Street  
Belfast

BT1 6ER

Telephone switchboard: 028 9031 1575

## **What happens next?**

We recognise that, due to the differing circumstances of each case, it may not be possible or appropriate to follow the same procedure in every instance. If, during any stage of the process described below, it becomes clear that we are not the appropriate body to address the disclosure, we will halt the process and put you in touch with the body which will be able to help you.

In respect of matters that properly fall to us, we would expect the investigation to follow the steps set out below:

1. The relevant director will undertake an initial review of the disclosure and assign it to experienced staff.
2. We will try to obtain full details of the allegation, as soon as possible. Where appropriate, this could involve further communication with you either by telephone or face-to-face meeting.
3. The investigating team will try, where possible, to obtain your consent before any information is passed on, although such decisions remain at our sole discretion..
4. When sufficient information has been gathered, we will reach a conclusion on the validity of the allegations made, and decide what, if any, action to take. If no further action is to be taken, you will be informed where possible.

We appreciate that you will be anxious to know what has happened, and we will endeavour to keep you informed, in general terms, of any progress. However, we will not disclose confidential information without lawful authority and legal restrictions may prevent us giving detailed feedback in many cases.

Due to the varied nature of potential allegations under this Guide it is not possible to lay down precise timescales for investigations. However, the senior officer leading your investigation will ensure that the investigators complete any inquires that need to be undertaken as quickly as possible and a timetable, where possible, will be agreed with you.

## **What if I have further questions?**

We review our approach regularly to ensure that it meets the needs of both workers raising concerns with us and the Utility Regulator. If you have any questions about anything we have said in our Guide, please contact any of the directors named above.