



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2014

Consultation Paper 79:2014

Handling of Protected Disclosures by the Central Bank of Ireland



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SECTION 1: PURPOSE OF CONSULTATION

The Central Bank (Supervision and Enforcement) Act 2013 (“the Act”) has introduced new provisions in relation to the making of reports to the Central Bank regarding alleged breaches of financial services legislation. These are referred to in the legislation as protected disclosures. This legislation has prompted the Central Bank to put in place new arrangements regarding the receipt and handling of certain protected disclosures i.e. reports by whistleblowers and mandatory reporting by relevant senior management in regulated financial service providers (referred to as Pre- Approval Controlled Functions or PCFs).

The Central Bank examined the practices of various agencies both domestic and international; to ascertain the manner in which Whistleblower information is received and processed. The Central Bank also researched best Whistleblower practice among financial services regulatory agencies to aid in the development of its policies and procedures to address the provisions of the Act.

In considering its Whistleblower policies and procedures the Central Bank is seeking to create an environment and structure that encourages those persons with relevant information to come forward with information to the Central Bank.

The purpose of this consultation is to draw attention to the new provisions in the Act and to seek the views of stakeholders and the public in relation to the arrangements and policies that the Central Bank intends to put in place in response to the legislation. Submissions are invited on all aspects of the proposed policies and procedures set out in this paper.

SECTION 2: OVERVIEW OF THE LAW ON PROTECTED DISCLOSURES

The Law relating to protected disclosures is set out in Part 5 of the Act. The full text of Part 5 is included in Appendix 1 to this consultation paper. Where any divergence arises between this paper and the Act, the Act prevails. To implement the provisions of the Act, the Central Bank intends to create a central Whistleblower Desk to deal with protected disclosures reported to the organisation.

2.1 Protected Disclosures

In broad terms, where a person makes a disclosure in good faith to the Central Bank or one of its employees, and the person making the disclosure has reasonable grounds for believing that the disclosure will show that there has been a breach of financial services legislation or the destruction of evidence relating to such a breach and provides their name, the disclosure is a protected disclosure. Financial Service Legislation is broadly defined in the Act and covers most legislation regarding the regulation of financial service providers.

2.2 Protections

In broad terms the protections which accompany a protected disclosure are outlined in the Act and are as follows:

- The Bank may not disclose the identity of the person, subject to a number of exceptions
- The person making the protected disclosure is protected from civil liability
- The person making the protected disclosure has a right of action in tort
- Where the person making the disclosure is an employee, their employer may not penalise them for making the disclosure
- An employer may be prosecuted for penalising an employee

Under the Act, the Central Bank has no role in assessing what is or is not a protected disclosure as defined in the legislation. This is a matter of law which, in the case of a dispute, falls to the courts to decide.

SECTION 3: BACKGROUND TO PROPOSED POLICY AND PROCEDURES FOR PROTECTED DISCLOSURES

In light of the new legislation, the Central Bank intends to put in place new arrangements for the receipt and handling of whistleblower reports. In designing these new arrangements we have had regard to the Central Bank's experience of dealing with whistleblower reports, the experience of other regulators in this jurisdiction and also the experience of financial regulators in other jurisdictions with whom we have consulted.

In assessing international best practice the Central Bank particularly focussed on the following four jurisdictions: the United Kingdom, the United States, Australia and Canada. From these assessments the Central Bank identified the system utilised in the FCA (UK) as being the one most appropriate for dealing with Whistleblowers in the Irish context. A centralised model based on the Act for information provided is the model the Central Bank seeks to implement.

The Act places considerable emphasis on protecting the identity of a person who has made a protected disclosure. As such the policies and procedures being implemented by the Central Bank to deal with Whistleblower reports reflect the enhanced confidentiality required when dealing with protected disclosures. This level of confidentiality when dealing with Whistleblowers is also a feature of international best practice.

The Central Bank already receives reports in relation to alleged wrongdoing by regulated financial service providers, unauthorised providers and the conduct of persons who work in such firms. We recognise this information as an important source of intelligence and on many occasions those reports form the basis for follow up investigative work by the Central Bank. On other occasions reports have subsequently been shown to be unsubstantiated or untrue. Sometimes the matters alleged are more properly dealt with by An Garda Síochána and information is passed to the Gardaí for follow up by them. There are also a proportion of reports that may not be subject to any further action. There can be a number of reasons for this. For example, sometimes the matter complained of does not amount to a breach of the law. Other times a whistleblower may provide information that is too vague or unclear to provide a basis for follow up investigation.

In formulating the new arrangement we are conscious of the need to balance a number of different considerations, including the need to: (a) encourage the reporting of good quality information to the Central Bank, (b) seek to protect as much

as possible the identity of the person making the protected disclosure, and (c) ensure fairness to the entity against which the allegation is made.

To facilitate persons making protected disclosures, the Central Bank intends to put in place new arrangements for the handling of such disclosures. The aim of those arrangements is to ensure that there is clarity around how to make contact with the Central Bank and how any information provided will be handled. A particular focus of the new arrangements is to ensure that the identity of the person making the disclosure will not, other than in exceptional circumstances, be disclosed publicly.

It is intended that the Whistleblower Desk will serve as the primary point of contact for Whistleblowers wishing to make a disclosure. This centralised system used to deal with Whistleblower disclosures is seen as the most efficient and effective use of resources to adequately address the requirements of the Act and to provide the Central Bank with a robust method of capturing protected disclosures.

SECTION 4: PROPOSED PROCEDURE FOR WHISTLEBLOWER DISCLOSURES

4.1 The Whistleblower Desk

A Whistleblower Desk has been established to receive and manage disclosures from persons who wish to make protected disclosures. The Central Bank has published a dedicated telephone number, email address and postal address for the Whistleblower Desk in order to facilitate persons making disclosures¹.

The Whistleblower Desk is initially the primary point of contact with a Whistleblower. The Whistleblower Desk will answer questions about the process, and clarify and document the disclosure made by the Whistleblower.

The Central Bank seeks to adopt this model as it facilitates ease of access for prospective Whistleblowers to come forward with information. Should a potential Whistleblower wish to make a disclosure to the Central Bank, this is facilitated via a dedicated Whistleblower phone line.

¹ Whistleblower phone: 1890 130014

Whistleblower email address: confidential@centralbank.ie

Postal address: Whistleblower Desk, Central Bank of Ireland, PO Box 559, Dame Street, Dublin 2.

Any person who has information that they, in good faith, reasonably believe will show a breach of financial services legislation or the destruction of evidence relating thereto should contact the Central Bank's Whistleblower Desk.

4.2 Handling of Complaints and Business as usual Disclosures.

Although a complaint by a consumer may sometimes fall within the definition of a protected disclosure under the legislation, the Whistleblower Desk will not ordinarily treat such disclosures as whistleblowing and will not deal with such complaints. There is already an established process for dealing with consumer complaints through the Financial Services Ombudsman.

Similarly, regulated financial service providers, their agents and employees, in the course of their normal engagements with the Central Bank, frequently make self disclosures in relation to potential breaches of financial services legislation. Where such disclosures could fall within the definition of protected disclosures in the Act, they will not ordinarily be treated as Whistleblower disclosures by the Central Bank.

The Central Bank also receives contacts from members of the public in relation to consumer matters and these will continue to be dealt with through the Central Bank's Public Contact Unit , the contact details for which are on the Central Bank's [website](http://www.centralbank.ie)². Where a person makes contact with the Whistleblower Desk and it appears that the matter would be better dealt with in a different manner - e.g. as a consumer complaint, this will be explained by the Whistleblower Desk.

4.3 Next Steps

The Whistleblower Desk will have no filtering function for disclosures received. It will share the disclosure with the relevant supervisory division so that the matter can be considered by them and a fully informed decision made as to whether further investigation is warranted. The subject matter experts are assigned by the relevant supervisory divisions, thus they are in a better position to make the required judgements regarding the actioning of Whistleblower reports.

² <http://www.centralbank.ie/regulation/processes/consumer-protection-code/Pages/contact-us.aspx>

4.4 Confidentiality

- **Within the Central Bank**

The Central Bank is mindful of the sensitivity of protecting the identity of individual Whistleblowers and will place restrictions on internal communication accordingly.

- **Externally**

Section 40 (5) of the Act prohibits the Central Bank from disclosing the identity of a Whistleblower other than in the particular circumstances set out in the Act or with the Whistleblower's express consent.

Maintaining a high level of confidentiality around Whistleblower reports is not only a requirement of the legislation, it is also considered vital in ensuring that potential Whistleblowers will have confidence in the ability of the Central Bank to operate a confidential and effective Whistleblower regime. A Central Bank approach which is supportive of the Whistleblower and places identity protection at its centre is fundamental for the effective implementation of the Act. Such an approach provides a greater opportunity to influence the behaviour of firms for the better. The level of confidentiality should generate confidence in the Central Bank.

4.5 Communication of disclosures to supervisors or senior officials

The preferred channel for receipt of disclosures from Whistleblowers will be to the Whistleblower Desk but there may be some Whistleblowers who will elect to deal with a supervisor whom they know or another Central Bank official. Where a supervisor or a Central Bank official receives a disclosure from a Whistleblower they will log the receipt of the disclosure with the Whistleblower Desk. This is to ensure that all Whistleblowing disclosures are fully recorded. The Whistleblower Desk will then share an outline of the disclosure with the relevant supervisor as appropriate. This approach allows some flexibility for Whistleblowers in how they bring their disclosures to the Central Bank while remaining in keeping with a centralised Whistleblower model. This approach is considered best practice by other regulatory agencies.

4.6 Anonymous disclosures

The Central Bank will accept anonymous disclosures. Notwithstanding this, the Central Bank encourages any person who makes a Whistleblowing report to provide their name and contact details as the Central Bank may need to contact that person to clarify the information disclosed. However, the Act provides that any person who makes a disclosure anonymously is not making a protected disclosure and accordingly,

if the identity of the person making it becomes known, that person will not enjoy the protections under the Act.

4.7 Feedback to the whistleblower

The Central Bank will not inform Whistleblowers of what action if any, has been taken as a result of their disclosure. Such an exchange of information could breach the legal rights of any person, or firm who has been accused of wrongdoing by the Whistleblower, or could infringe confidentially obligations of the Central Bank generally and under Section 33 AK of the Central Bank Act 1942. In addition providing information to Whistleblowers might compromise the investigation of a case in some circumstances. This feature is similar to the FCA (UK) model of dealing with Whistleblowers.

In considering its policy on this, the Central Bank appreciates that this may cause some frustration on the part of a Whistleblower. However, the rights of all parties need to be protected and the Central Bank's statutory obligations met.

4.8 Recording of telephone calls

During the course of the Central Bank's research of other regulatory organisations, it was indicated that in many cases the best practice approach to deal with reports over the phone is to record such calls. The recording of calls ensures all of the information provided is correctly captured and avoids any subsequent disputes about what was said by a Whistleblower or by the call taker.

The Central Bank will record all telephone calls on the dedicated Whistleblower telephone line. A voice message will inform all callers to this line that the call is being recorded, prior to the Whistleblower Desk answering the phone. The Central Bank has considered that recording of calls to the Whistleblower line may discourage some potential Whistleblowers from making contact. On balance however, the Central Bank considers the recording of calls to be the better route. Should such recording dissuade a potential Whistleblower, they should contact the Bank by alternative means, such as email or letter.

SECTION 5: SECTION 38 (2) DISCLOSURES BY PERSONS HOLDING PRE-APPROVAL CONTROLLED FUNCTION ROLES

Section 38 (2) of the Act places an obligation on certain senior persons within a regulated financial service provider to report a prescribed contravention that may be, or may have been, committed, or the destruction of evidence relating to such contraventions. This obligation applies to persons who perform what is referred to in the Act as pre-approval controlled functions.

The Central Bank has established a dedicated email address and postal address to facilitate PCF's in making Section 38 (2) disclosures. The Whistleblower Desk within the Central Bank will receive and review disclosures from PCF's under this section of the Act. Contact details for this desk are available on the Central Bank's website³.

The Central Bank is conscious that PCF reports are made pursuant to a legal obligation. For this reason it is important that the PCF and the Central Bank have a written record of what was reported and when it was reported. It is envisaged that providing a dedicated email and postal address for completion of protected disclosures, will assist PCFs in complying with their legal obligations under the Act and will ensure that there is no confusion about how to make a report. If a PCF has any queries in relation to the completion of a submission, they will be able to raise their query through a dedicated telephone line or e-mail address linked to the Whistleblower Desk. Although a PCF may discuss how to make a disclosure with the Whistleblower Desk, they will be required to submit their disclosure in writing.

Receiving protected disclosures after the Bank has sought information in the exercise of its functions.

Information received by the Central Bank from a PCF after a request for information by the Central Bank in the exercise of its functions, will not be treated by the Central Bank as a protected disclosure benefitting from the Central Bank's Whistleblower policy.

³ PCF's Disclosure phone: 1890 130015

PCF's email address: Protecteddisclosures@centralbank.ie

Postal address: PCF Disclosure Desk, Central Bank of Ireland, PO BOX 559, Dame Street, Dublin 2.

SECTION 6: MAKING SUBMISSIONS

- 6.1** Part 5 of the Act provides for protected disclosures. This Consultation Paper (“the Paper”) sets out the procedures which the Central Bank proposes to implement in response to Part 5 of the legislation.
- 6.2** Comments are invited on all aspects of the Paper and its subject matter. If you are raising an issue that we have not referred to in the Paper, please indicate this in your submission.
- 6.3** We intend to make all submissions available on our website as soon as practicable following the deadline for receiving submissions. We will not publish any information which we deem potentially libellous or defamatory.
- 6.4** All submissions will be reviewed by the Central Bank, collated where similarities exist, and addressed in writing on the Central Bank’s website. The Central Bank will not respond on an individual basis.
- 6.5** The Central Bank accepts no liability whatsoever in respect of any information provided which is subsequently released or in respect of any consequential damage suffered as a result.
- 6.6** Please make your submissions in writing and, if possible, electronically as a Word or pdf document by email on or before 3 months after the date of publication of the consultation paper.
- 6.7** Submissions should be marked “Protected Disclosures CP 79/2014” and sent by email to confidential@centralbank.ie.
- 6.8** In the event that you are unable to send your response electronically, please forward it by post, marked “Protected Disclosures CP 79/2014”, on or before 19th June 2014 to:

Whistleblower Desk
Central Bank of Ireland
PO Box 559
Dame Street
Dublin 2

Appendix1: <http://www.irishstatutebook.ie/pdf/2013/en.act.2013.0026.pdf>



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