



Coimisinéir um Nochtadh Cosanta
Protected Disclosures Commissioner

Annual Report 2023

We facilitate reports of
wrongdoing in the workplace

2024 ©Office of the Protected Disclosures Commissioner

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Annual Report 2023

Contents

Message from the Protected Disclosures Commissioner	2
Introduction by the Director General	4
1. The Protected Disclosures regime in Ireland	6
2. The Commissioner's process and approach to reports of wrongdoing	9
3. 2023 in numbers	13
4. Sector issues	16
5. Theme from the first year in Office: Some gaps in regulation	18
6. Challenges experienced during our first year of operation	20
6.1 Misunderstanding about the role of our Office	20
6.2 Repeat reports	21
6.3 Anonymous reports	21
6.4 Challenging timelines	22
6.5 Approach to reports that are closed on initial assessment	23
6.6 Public bodies without Protected Disclosures channels	23
7. Objections to our decisions	24
8. Reports which contain more than one allegation	25
9. Cases accepted and assessed by the Protected Disclosures Commissioner	26
10. Corporate Governance	27
11. Case studies	28



Message from the Protected Disclosures Commissioner

The Protected Disclosures (Amendment) Act 2022 (the Act), commenced on 1 January 2023, established the Office of the Protected Disclosures Commissioner (OPDC) and provided that the Ombudsman is also the Protected Disclosures Commissioner. Accordingly, I was appointed the first Protected Disclosures Commissioner on 1 January 2023.

The year under review, 2023, marked the first year of operation of the Office. Like the establishment of any new organisation, the first year was a year of learning and growth, and not without some challenges.

The main purpose of our Office is to transmit reports of wrongdoing to the body or person most appropriate to follow-up on those reports. In some limited circumstances, we also accept reports ourselves, where we are unable to identify an appropriate body which can deal with the report. The work of our Office serves to identify wrongdoing and to protect those who have reported any wrongdoing.

Reporting wrongdoing takes courage, conviction, and in many cases, is done out of a strong sense of duty by calling out and stopping wrongdoing. Calling out wrongdoing helps to safeguard workers and the public. It is imperative that those who make legitimate reports of wrongdoing are protected and that their reports are correctly followed up.

It is important that organisations take reports of wrongdoing seriously. Such reports should be considered an important tool in good corporate governance, and identifying and stopping wrongdoing. Some organisations do not take this view and demonstrate a reluctance to dealing with reports of wrongdoing, offering a multitude of reasons or technicalities not to deal with a disclosure.

In our first year of operation we experienced some situations where organisations were relying on narrow interpretations of the legislation to avoid dealing with reports.

Organisations who receive reports ought to be mindful of the fact that by following up reports of wrongdoing, they are not only upholding their legal mandate, but fostering and encouraging a culture of accountability, integrity and transparency, and improving the common good. Ignoring or avoiding reports of wrongdoing, and potentially allowing wrongdoing to continue, on the basis of a technicality is not, in my view, either good governance or management.

Several themes have emerged from our work during 2023. As will be seen from this report the new protected disclosures regime for Ireland, having many actors and steps, is not straightforward and thus is open to being misunderstood. This can include a misunderstanding of the role of the OPDC and its limitations. Our role has been misunderstood by both those who make reports, and those who receive them.

This report sets out more detail about our role and our process, together with the overall protected disclosures regime. In addition, we set out the other challenges and recurring issues our organisation has faced. We have taken steps to improve understanding as to what our Office does and we are committed to building on this in 2024.

Another issue that created significant challenges for our Office, and those using our service, is the incredibly short time limits set out in our governing legislation in relation to the statutory deadlines within which we are required to respond to reports. I strongly believe that these mandatory deadlines should be amended to ensure that our Office can continue to work to the highest standards with the resources we have to hand.

Other challenges we have encountered point to bigger legislative issues that we believe the Government should act on – specifically gaps where we have identified a lack of regulatory or other oversight including in the health sector. These need to be addressed as a matter of urgency to protect the public.

Despite these challenges, the first year of our Office has been successful in strengthening the systems and mechanisms for reporting, and following up on alleged workplace wrongdoing.

I would like to thank the Director General and the staff of the OPDC for their dedication and commitment in establishing the Office and managing the significant number of disclosures received in our first year of operation.

I look forward to building on our learnings from the past year and continuing to work closely with our stakeholders. Finally, it is my pleasure to submit the first Annual Report of the Office of the Protected Disclosures Commissioner to the Dáil and Seanad Éireann pursuant to the provisions in Section 22(9)(a) of the Protected Disclosures (Amendment) Act 2022.



Ger Deering

Protected Disclosures Commissioner

May 2024



Introduction by the Director General

At the outset I would like to thank our staff for their hard work during the year in achieving our very important strategic objective of ensuring that the Office of the Protected Disclosures Commissioner (OPDC) was in a position to function effectively on establishment. Our team worked hard to devise work processes which were secure and robust and which supported the independence of the OPDC, and to establish effective liaison arrangements with all government departments and prescribed persons to ensure the strict timelines on transmission of reports as set out in the Act are adhered to. These liaison arrangements have been very helpful and we met with many public bodies throughout the year to explain and clarify our role. We continue to encourage all public bodies to get in touch with us.

The fact that we were established as part of the Ombudsman's Office has allowed us to hit the ground running and to put in place an experienced team in OPDC with the independent mind-set required to carry out our very specific remit. Behind the OPDC team, we have a "corporate spine", which provides all of the back office supports so that the OPDC team are fully available to focus on OPDC work. The corporate spine consists of HR, ICT, Finance, Procurement, Facilities, Legal, Communications, as well as support in handling Data Protection and FOI requests. The ICT team achieved significant progress in 2023 by outsourcing many of our support functions to the Office of the Government Chief Information Officer (OGCIO) and by aligning our ICT Strategy with that of the OGCIO. This will have the effect of improving our data security and creating long term resilience in our systems. Our Legal team continued to provide support to each of the Offices on casework and investigations and has managed our legal costs and procurement with a focus on quality assurance and value for money. We have also taken part in the first wave of the new Civil Service Financial Management System, which was a major project for our Finance team and I am proud of the work they did on it. These were all part of the Strategic Objectives set out in our Statement of Strategy 2022 - 2025.

As we move into our second year of operation in 2024 we look forward to reviewing our progress in terms of realising our objectives. We will continue to focus our outreach on key stakeholders, strengthen and refine our work processes to increase the understanding of what we do, and ensure that reports of wrongdoing are properly assessed and followed-up. We will maintain our openness and accessibility both to reporting persons and to prescribed persons and other suitable persons.



Elaine Cassidy
Director General

1. The Protected Disclosures regime in Ireland

Our experience over the first year of operation is that the protected disclosures regime can be confusing to navigate. Below are some of the main organisations dealing with Protected Disclosures.



An Roinn Caiteachais Phoiblí
Sheachadadh PFN agus Athchóirithe
Department of Public Expenditure
NDP Delivery and Reform

The Department of Public Expenditure, NDP Delivery and Reform

The Department has overall responsibility for development of the framework for implementation of Government policy on Protected Disclosures. The original regime under the Protected Disclosures Act 2014 commenced on 15 July 2014. The Protected Disclosures (Amendment) Act 2022 was enacted to implement EU Directive 2019/1937 and commenced on 1 January 2023. This amended the 2014 legislation, updating the original statutory framework for how protected disclosures should be dealt with. For convenience, we refer to the Protected Disclosures Act 2014, as amended by the Protected Disclosures (Amendment) Act 2022, as “the Act”.



Employers

The Act provides that anyone who wishes to make a disclosure must be a “worker”¹ of the organisation, as defined by the Act, against which they wish to make allegations. The Act places a duty on all employers in the public sector and to private sector employers who have 50 or more staff to establish, maintain and operate internal reporting channels for the receipt of reports under the Act. Workers are encouraged, where possible, to firstly call out wrongdoing to their employer in order to give them the opportunity to rectify it.

1 [https://revisedacts.lawreform.ie/eli/2014/act/14/section/3/revised/en/html#:~:text=F8%5B%22worker,2\)\(b\)%2C](https://revisedacts.lawreform.ie/eli/2014/act/14/section/3/revised/en/html#:~:text=F8%5B%22worker,2)(b)%2C)



Workplace Relations Commission

If workers believe they have been penalised for making a disclosure they can go to the Workplace Relations Commission (WRC), which has the power to award compensation in certain situations. Workers should be aware that time limits apply to taking cases to the WRC.



Transparency International Ireland

The Act provides for the Department to provide a support mechanism available to people who wish to make disclosures. Transparency International Ireland (TII) has been designated for that purpose. TII operates a helpline for such cases and provides a limited legal advice service.



Prescribed Persons

The Act provides that certain public service bodies, mainly regulators, are Prescribed Persons for dealing with particular disclosures. Prescribed Persons have been designated to receive disclosures directly from any person or body within their area of responsibility. They can also transmit disclosures to other Prescribed Persons or to the OPDC. They do this where they do not have remit to follow-up on the allegations contained in the report but are aware of a different Prescribed Person that has such remit.



Office of the Protected Disclosures Commissioner

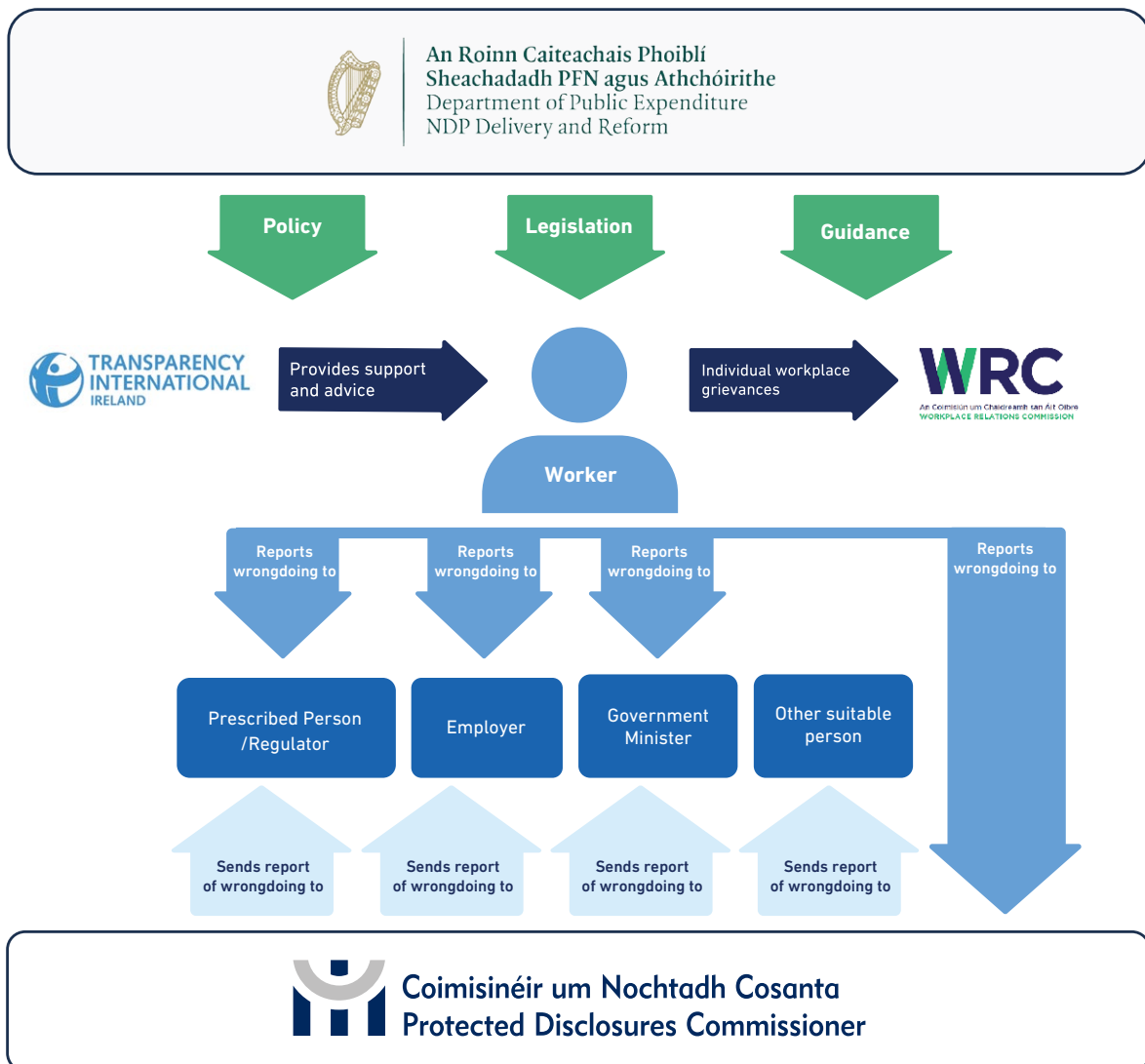
The Act provides for the establishment of our Office – the Office of the Protected Disclosures Commissioner. Our primary function is to send disclosures on to whatever body we believe is best placed to properly follow-up on the allegations set out in them. We are obliged to first identify an appropriate Prescribed Person for that purpose, and if we cannot identify one, then we must transmit the report to what we consider to be the most appropriate body (as set out in the Act as Other Suitable Persons). Only if an appropriate alternative recipient cannot be found can the OPDC accept a report for follow-up.



Other Suitable Persons

These are bodies that are not designated as Prescribed Persons that the OPDC considers are appropriate to receive and follow-up on the report. These bodies can receive disclosures from this Office but they cannot re-direct them to other Prescribed Persons.

The Protected Disclosures institutional regime in Ireland



2. The Commissioner's process and approach to reports of wrongdoing

Most people contact their employer or a prescribed person to report work-related wrongdoing. A prescribed person is usually a regulator in the sector of the alleged wrongdoing. For example, in the case of a report detailing a breach of environmental law, the prescribed person with the regulatory function is the Environmental Protection Agency.

As reporters are often not sure where to send their report, or don't wish to send their report to their employer, they can make a report directly to us. Our role is to send reports of wrongdoing to the appropriate organisation in accordance with the Act. In certain circumstances, we will follow up the report of wrongdoing if there is no other appropriate organisation.

As this is our report on our first year of operation, we think it is helpful to set out below our approach to our role.

Q. How do we receive reports?

A. We can receive reports of wrongdoing:

- directly from a worker
- from a Minister, who is obliged to send it to the OPDC within ten days of receipt or
- from a 'prescribed person' in certain circumstances.

Q. What happens if the worker is nervous about reporting?

A. A person may wish to speak to Transparency International Ireland who can also help and advise.

We understand that workers, particularly in the private sector, may fear repercussions. We encourage people to talk to us before making a report if they are concerned. We can be contacted by phone, email or by calling to our office.

Q. What do we do when we receive reports?

A. Our first step, if necessary, is to seek any further information or clarity from the reporter. This is done by phone or email.

We do not screen reports and we do not have a role in determining whether the report contains any wrongdoing, or if the person is a worker.

We review the report to ascertain who we should transmit it to. This involves researching the sector, the regulatory landscape and the specific statutory remits of potential recipients which, in most cases, is either a prescribed person or an 'other suitable person'.

Q. What happens with anonymous reports?

A. We do our best to transmit anonymous reports. It can often be difficult, however, to assess and investigate anonymously reported issues. It isn't possible for example to seek further information or clarity from an anonymous reporter.

Q. How do we decide where to transmit reports?

A. In coming to a decision on where to transmit reports of wrongdoing, we consider the following:

- The confidentiality and safety of the reporting person
- The statutory remit of potential prescribed persons
- The nature of the employer and whether they are public or private sector
- The size of the organisation and whether they have a developed protected disclosures channel in place, and
- Whether an other suitable person exists.

Q. What happens if we cannot identify a prescribed person to receive the report?

A. Where there is no prescribed person we must decide who is the appropriate "other suitable person" to receive the report. The Protected Disclosures Commissioner (the Commissioner) has the authority to decide who is a suitable person and that person must receive and act on the report.

Q. What happens if the report contains multiple allegations on different issues?

A. In some cases, a report may contain multiple allegations on different issues, which fall under the remit of a number of different recipients. In such cases we will consider whether it is appropriate to split the report and send it to different bodies or send it in full to one body who we consider is best placed to deal with all of the allegations. We refer to this further in section 9 of this report.



Q. What happens once we have identified where to send the report?

A. Once the Prescribed Person or Other Suitable Person has been identified, we transmit the report to them. It is important to note that we sometimes transmit reports to the body against whom allegations of wrongdoing have been made. For example, allegations of wrongdoing within a public sector body might go to the CEO or Chair of the Board of that body. We do this when we are satisfied there is a mechanism within the body to properly investigate the allegations and are of the view that transmission of the report will not create a risk of serious penalisation of the reporting person or that evidence will be concealed or destroyed.

Q. Do we have a continuing role after we have sent the report?

A. Our involvement is complete after we forward the report of wrongdoing to the most appropriate person. That organisation will take the appropriate steps to deal with the disclosure, and is legally obliged to follow up on the report. The Commissioner has no role in overseeing follow-up by other bodies.

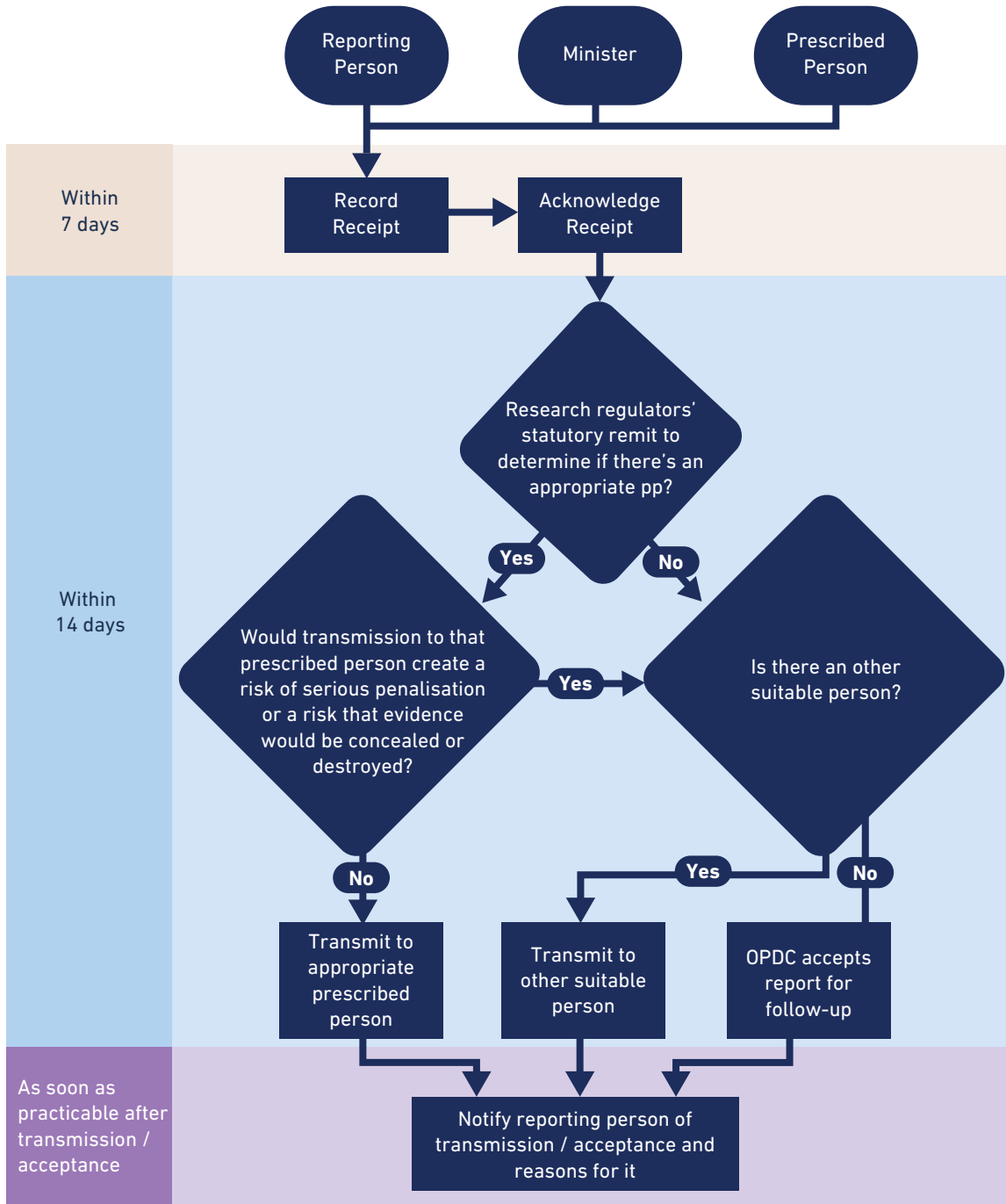
Q. What happens if we cannot identify where to send a report?

A. Where there is no prescribed person or other suitable person, we will accept the report and will assess it as the Commissioner is the designated Prescribed Person of last resort.

Q. What happens to reports of wrongdoing received before 1 January 2023?

A. The new regime and our Office both came into effect from 1 January 2023. The new regime does not apply to reports of wrongdoing received by other bodies before 1 January 2023. Instead, it provides for such reports to be concluded in line with the original regime in the Protected Disclosures Act 2014. Our Office, therefore, has no role regarding reports received before 1 January 2023. During 2023 we received 2 reports that had been sent to relevant bodies under the original regime before 1 January 2023 which we sent back to the bodies/reporters who had sent them to us for the original follow-up of those reports to continue.

Office of the Protected Disclosures Commissioner: Timelines and process



3. 2023 in numbers

We received **283** reports of alleged wrongdoing in 2023

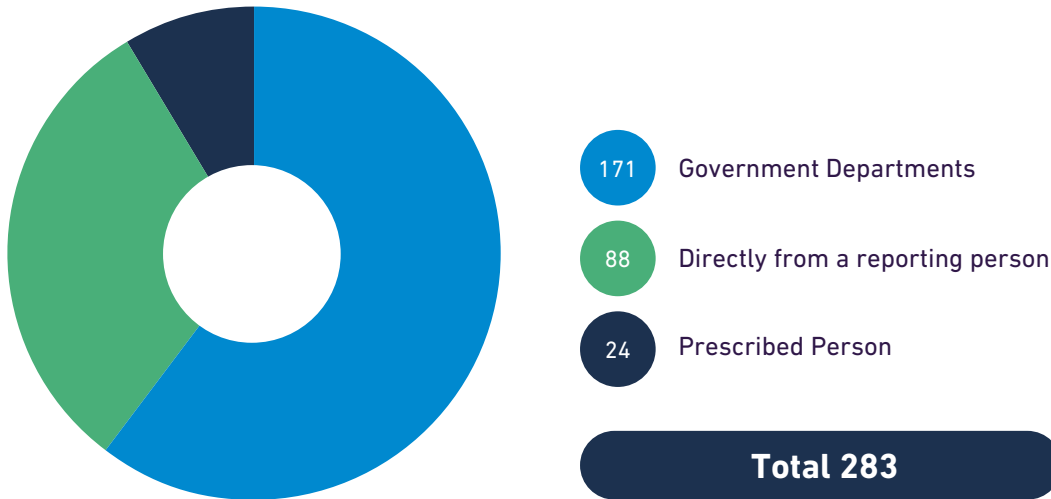
What we did with the reports

Transmitted to Prescribed Persons / Other Suitable Persons		267
Dealt with by OPDC		14
Completed	4	
On-hand	10	
On-hand and awaiting transmission in 2024		2
Total		283

Reports received by sector

Education	42
Aviation	39
Defence	34
Local Authority	23
Medical	21
Policing	21
Nursing/Residential Homes	16
Fisheries	11
Prisons	8
Transport	8
Other	60
Total	283

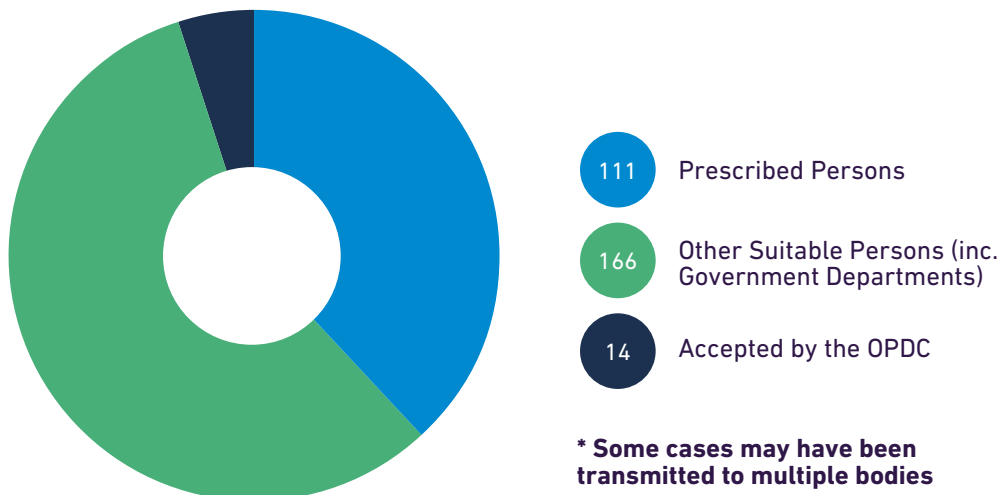
Where did the OPDC receive reports FROM?



Top 5 Government Departments which transmitted reports TO the OPDC

Department of Defence	26
Department of Justice	26
Department of Education	25
Department of Transport	17
Department of the Taoiseach	17

Where did the OPDC transmit reports TO*



Top 5 Government Departments the OPDC transmitted reports to

Department of Defence	24
Department of Education	23
Department of Justice	10
Department of Housing, Local Government and Heritage	8
Department of Enterprise, Trade and Employment	8

Top 5 Prescribed Persons/Other Suitable Persons the OPDC transmitted reports to

Competition and Consumer Protection Commission	27
Health Service Executive	14
Irish Aviation Authority	11
Garda Síochána Ombudsman Commission	10
Central Bank of Ireland	8

Number of reports submitted by individuals

Number of reporting persons	Reports submitted per person
118	1
8	2
7	3
3	4
2	5
1	6
1	8
1	21
1	35
1	36

4. Sector issues

We received reports of alleged wrongdoing in relation to a number of sectors. We comment below on just some of these sectors.

Education

During 2023 we received 17 reports of alleging wrongdoing in second-level schools. Of these, 12 of the schools fall within the remit of relevant Education Training Boards (ETB).

The Commissioner noted that while it is not his role to follow-up on the allegations in reports this Office transmits to appropriate bodies, it is nevertheless striking that so many of the school-related reports come from the ETB sector. Of the 17 reports in question, this Office transmitted three back to the ETB in question with the remaining 14 being transmitted to the Department of Education. He took the view that where the allegations did not concern senior personnel within the relevant ETB, it was usually appropriate to transmit the report to the relevant ETB for follow-up. However, where the allegations concerned more senior personnel within the ETB, the Department was usually a more appropriate recipient. However, each report was considered on its particular facts.

Defence


This sector includes the Defence Forces, the Department of Defence and the Defence Forces Ombudsman. We received a combined total of 34 reports concerning this sector from six different reporters in 2023. Ten of the reports alleged wrongdoing affecting the reporters themselves. There were also suggestions of a lack of, or inappropriate, action on previous disclosures.

Careful consideration of the particular facts and circumstances of each report was required before deciding on the appropriate recipient to carry out follow-up. 24 cases were transmitted to the Department of Defence, 2 cases were transmitted to the Chief of Staff of the Defence Forces and 5 cases were accepted by the OPDC for follow-up.

Local Authority

Over the course of the year our Office received 23 reports alleging wrongdoing in the local authority sector. The Chief Executive of the relevant local authority is a prescribed person in relation to the functions of a local authority under any enactment, so the OPDC's first consideration in relation to local authority reports must be whether the CEO is an appropriate prescribed person. As we have done for other sectors, our usual approach is to transmit reports to the CEO of the relevant local authority where we are satisfied that the report does not implicate the most senior personnel, such that the CEO would not be an appropriate prescribed person in the circumstances. Reports concerning the CEO or elected Councillors have proved more challenging in practice, for the reasons set out below.

The Department of Housing, Local Government and Heritage has overall sectoral responsibility for the local authority sector. We transmitted eight local authority cases to the Department in 2023. The Department objected to six of these transmissions. We did not accept, however, that the reports fell outside their remit. The Department's concern is that it is not the role of the Minister or the Department to intervene with local government. At the time of publication, discussions on this point are ongoing between our Office and the Department of Housing, Local Government and Heritage.



5. Theme from the first year in Office: Some gaps in regulation

The legislation provides that the Protected Disclosures Commissioner will only accept reports himself as a last resort.

The Commissioner acknowledges the rationale for this position. While the Commissioner has investigative powers to carry out follow-up, the Commissioner has no powers of enforcement or sanction in relation to wrongdoing, so the outcome of any follow-up will be limited to a report and/or referral to a body with appropriate power to take action. In practice, we cannot feasibly develop expertise in every sectoral area across the employment landscape.

For truly effective follow-up to take place, the recipient of a report should be able to address the wrongdoing, have appropriate sectoral expertise, and ideally have the power to effect system changes where needed. This is outside the scope of what the Commissioner can achieve.

Our experience over the course of 2023 has shown that regulatory gaps exist in certain sectors, meaning that wrongdoing may not be properly addressed. The Commissioner can highlight to the Government where regulatory gaps arise. The Government should then carefully consider how these regulatory gaps should be filled, implementing legislative change where necessary.

The majority of gaps in regulation that we have identified are in the care sector, and in particular in private congregated residential settings (other than private nursing homes), private hospitals and for non-medical issues in private medical and dental practices.

Private congregated settings

During 2023 we received 11 reports containing allegations of wrongdoing in private congregated residential settings. Neither HIQA nor the HSE has specific statutory responsibility for these facilities. Of these reports, eight were first reported to HIQA but because the allegations did not fall within their remit, they transmitted them to our Office, as is provided for in the Act. The reports we received from HIQA included allegations of poor conditions in a drug rehabilitation centre, abuse of service users, and theft from organisations. In respect of some of these reports, we identified the HSE as the most appropriate recipient of reports concerning these types of allegations in light of its oversight role for the health sector as a whole, and we therefore transmitted some of these reports to it.

While we considered the HSE to be the most appropriate recipient for such reports, the fact that the HSE does not have specific statutory responsibility for these areas means it is not as well placed to follow-up on the allegations as would be the case if it, or another appropriate body, was given that responsibility together with the powers necessary to investigate and follow-up on such reports. We provide more detail on two such cases below.

Private hospitals

We received two reports about medical consultants employed by private hospitals. As the hospitals are private hospitals the HSE does not have remit to investigate the allegations. The reporter in one of the cases provided enough information for us to identify the consultants against whom the allegations were made and, on that basis, we transmitted the report to the CEO of the Medical Council as the appropriate prescribed person. We considered that the issues raised in the second report related to the general safety of patients and the overall quality of care they were receiving. We identified the Director of Nursing of the hospital in question as the most appropriate recipient to handle the report.

The Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023 is expected to commence this year. This will expand HIQA's functions in monitoring and setting standards of private hospitals. We welcome this expansion of HIQA's remit.

Private dental and general medical practices

We received two cases where the allegations involved or included alleged wrongdoing by healthcare workers who were not regulated medical professionals. For GP and dental practices there is no independent regulation of non-professionals working in those practices. This means that reports of wrongdoing that may have a significant impact on patients, such as poor infection control measures, cannot be transmitted to an appropriate regulator for follow-up. In our view, this gap needs to be addressed for the benefit of workers in those environments and, ultimately, patients.

Other healthcare

Apart from the three categories referred to above, we also received twenty-three reports alleging various levels of professional misconduct by health professionals in different settings, including public hospitals and nursing homes. The medical profession is regulated by a number of regulators including the Medical Council (doctors), the Nursing and Midwifery Board (registered nurses and midwives), and the Dental Council (dentists). This means that there are appropriate regulators to whom we can transmit allegations against medical professionals in various disciplines.

6. Challenges experienced during our first year of operation

In this section of the report we set out some of the challenges we have dealt with during our first year of operation.

6.1 Misunderstanding about the role of our Office

The role of our Office is sometimes misunderstood. Given that it is our first year of operation, a certain lack of awareness is to be expected. We have sought below to address some of the more common misconceptions. We hope that this report and our future outreach activities will increase awareness of our remit and function.

- **The Commissioner is not an appeals body**

Our Office does not function as an appeals body either for investigations that have been undertaken or of decisions by bodies not to formally investigate allegations. The role of this Office is to identify the most appropriate recipient to follow-up a report of wrongdoing. In many cases, the most appropriate recipient will be the same body that previously followed up the same allegation of wrongdoing. A reporter's dissatisfaction with a body's follow-up of a report of wrongdoing is not, of itself, a reason not to transmit the report to that body for consideration. The legislation specifically envisages that bodies may close repetitive reports on initial assessment unless certain criteria are met, indicating that the original recipient of a report may well be the most appropriate body to carry out an initial assessment.

- **The Commissioner does not have the function of assessing (or "screening") reports**

The Act provides that cases can be closed if a report does not meet certain conditions. We are aware of a perception by some that the Commissioner will "screen" reports before transmitting them to an appropriate recipient, for example by determining whether the reporter is a 'worker' or whether the allegations meet the definition of 'relevant wrongdoing' under the Act. The Commissioner does not "screen" reports prior to their transmission, as these matters are for the recipient to consider when carrying out an initial assessment of the report as part of follow-up. Only if the Commissioner accepts the report for follow-up is an initial assessment carried out by the Commissioner.

- **The Commissioner does not have continuing oversight of a report once it has been transmitted to an appropriate recipient**

It is clear that some reporters expect that our Office will have a supervisory or oversight role in relation to their reports, particularly if they feel that the recipient has not followed up, or has not adequately addressed the allegations included in the report.

To manage expectations on this point, we explicitly inform reporters that we have no role under the Act supervising or overseeing follow-up on transmitted cases, and that our statutory role ends once the report is transmitted.

We have received reports where the alleged wrongdoing itself is failure by a recipient to acknowledge receipt of a report, to take action on it, or, where follow-up action has been taken, that follow-up action has not addressed the substantive allegations in a report. As set out above, the Commissioner is not an appeals body. In such cases, we again inform reporters of the limitations of our role in this regard.

6.2 Repeat reports

The Act does not place any limits on the number of reports that can be made by any one person. Recipient bodies have a mechanism under the Act to deal with repeat reports from the same reporter(s) to ensure there isn't a disproportionate use of resources by the bodies. This mechanism does not, however, place any limitation on individuals who want to make repeat reports from doing so.

We have dealt with and continue to deal with cases where a reporter sends a sequence of reports to our office, or to bodies who then pass them on to our Office, on what seems to be the same or similar issues.

6.3 Anonymous reports

During 2023 we received ten cases concerning the healthcare sector from anonymous or unidentified reporters. In one such case the original report did not have enough information to allow our Office to identify the most appropriate body to investigate the allegations. As the reporter was anonymous it was not possible to seek the necessary further information and we were unable to progress the case.

The fact that a report is anonymous does not always prevent our Office from sending reports to appropriate recipients. In the case of the other nine anonymous reports referred to above we were able to send the report to the appropriate body. As the reporter is anonymous it may mean that the body cannot request further necessary information from the reporter to carry out their investigation. It may also mean that they are unable to provide the feedback and follow-up to the reporter as provided for in the Protected Disclosures Act.

6.4 Challenging timelines

The Act provides for the following timelines in relation to receipt of reports by our Office:

- seven calendar days to acknowledge receipt of reports;
- 14 calendar days to transmit reports to prescribed persons, to other suitable persons or to accept them for investigation ourselves (or an extended period in certain exceptional circumstances);
- 14 calendar days to decide on objections to such transmission from those prescribed persons or other suitable persons to whom we transmit reports and, if accepted, to identify an alternative recipient.

While these timelines are challenging, during 2023 we managed to adhere to the turnaround times for acknowledging reports.

The 14 days to transmit or accept reports on the other hand proved more challenging and we have highlighted the issue to the Department of Public Expenditure, NDP Delivery and Reform. The timeline is in effect ten working days which can reduce to nine and even eight working days where public holidays arise during the 14-day period. The need to seek further relevant information or clarity can sometimes mean it is not possible to meet the fourteen-day timeline. We can extend the timeline for transmitting or accepting reports where the Commissioner considers, due to the nature and complexity of the report, that deciding on transmission or acceptance is not feasible within the fourteen-day timeline. In 2023 we extended the timeline in relation to 35 reports. Of these, 22 were extended while we waited for further information from the reporting person. Eight were extended due to the nature and complexity of the report, and four cases were extended to enable further consideration. In one case the timeline was extended while awaiting the formation of a new public body which would be best placed to consider the report.

The 14 days to decide on objections to transmission and, if accepted, to identify an appropriate alternative recipient has proved particularly challenging in light of the lack of any power to extend the time for this consideration. As set out below, we received 29 objections to transmission in 2023. In many such cases, the issues raised by the recipient in their objection were complex and multi-faceted, as the recipient of the report has a more detailed knowledge of the sectoral landscape and legislation than it has been possible for this Office to develop. Where the original recipient's objection is well-founded, it has in some cases been a complex task to identify an alternative appropriate recipient for the report. It is our view that providing flexibility to extend the time for consideration in complex cases would be more likely to result in the most appropriate recipient being identified following an objection and in clearer communications with the reporting person.

6.5 Approach to reports that are closed on initial assessment

The Commissioner does not have any role in overseeing or monitoring the progress or outcome of reports that have been transmitted to other bodies. Nonetheless, in 10 cases in 2023 the OPDC was informed that the recipient body would not be taking any further action in relation to a report of alleged wrongdoing as the report had been closed following initial assessment, for example because the reporter is not a “worker” or the report does not concern “relevant wrongdoing” within the meaning of the Act. We recognise that there is no obligation under the Act to do anything further once the protected disclosure process has been closed, and in some cases the recipient will be unable to do so. However, we would encourage recipients of reports – and particularly regulators – to consider whether it is nonetheless possible and appropriate to pursue the allegations of wrongdoing as part of their normal regulatory functions. This may be particularly important where a report identifies potentially serious wrongdoing.

6.6 Public bodies without Protected Disclosures channels

The Act provides that bodies must have a dedicated channel in place to receive disclosures. This channel must be separate to other communications channels in those bodies and is only to be accessed by duly designated personnel. This channel is vital to ensure that any report of alleged wrongdoing is seen and acted upon and must be in place at all times.

In 2023 we received two reports about an appropriate reporting channel not being in place.

A reporter made two disclosures to a public body that were not acknowledged and no follow-up communication received. It appeared the body did not have a dedicated reporting channel in place. Our Office raised the matter with it, and it has now rectified this issue.

We received a report concerning a Local Authority. The report also alleged that the Council did not have a dedicated protected disclosures channel in place. We engaged directly with it on the issue of the protected disclosures channel and through follow-up engagement with them it informed this Office that it now has a dedicated channel but has yet to put a protected disclosures email in place.

7. Objections to our decisions

Objections from recipients

The Act provides that if a recipient of a report has an objection to receiving a report from our Office, they have seven days to make their objection. Following receipt of an objection, we then have fourteen days to decide as to whether their objection should be upheld and, if so, to identify an alternative recipient. The Commissioner has the final decision on whether or not to accept an objection.

As referenced earlier, over the past year we have discovered that the provision to object to our transmission has been useful in helping the Office to carry out our role and in expanding our knowledge.

When we are deciding to whom we should transmit a report, we research which entity has legal responsibility for dealing with the allegations made in the reports. In 29 cases last year, we received objections to receiving reports from several bodies, who explained why the legislation under which they operate does not cover the allegations in the report. This helped point us in the direction of the correct recipient. Of the 29 objections received, we accepted six.

Objections from reporters

In deciding on where we should transmit reports, we consider which body would be best placed to follow-up on the allegations made in reports and to provide feedback to the reporter on that follow-up. In some cases, this results in us transmitting reports to regulatory bodies, while in others we transmit reports to a senior member of the body against whom allegations of wrongdoing have been made.


This can lead to objections from reporters. However, unlike the report recipients, the Act does not provide an objection mechanism for reporters. Despite this, our Office is committed to ensuring that reporters are given explanations as to who we transmit their report to and why we believe it is the best place to have their allegations investigated.

In 2023, we received 11 objections from reporters who were dissatisfied with our decision in relation to the transmission of their report.

8. Reports which contain more than one allegation

Most of the 283 reports we received in 2023 contained more than one allegation. While in most cases all the allegations fell to be dealt with by the same recipient, in some cases they fell under the remit of a number of different recipients. In those cases, we considered whether or not there was a readily identifiable core or central allegation in the relevant reports and, where there was, we transmitted those reports in full to the recipient best placed to deal with that allegation.

In general, the Commissioner takes the view that a single, thorough assessment is likely to produce more effective results than a series of separate assessments or investigations. However, in cases where no such core allegation could be identified, we transmitted each of the separate allegations to the most appropriate recipient which resulted in reports being split between several different recipients. To mitigate against any potential overlap of investigation by the different recipients of these split cases, the Office notified each recipient which allegation(s) were being transmitted both to them and another recipient. We also notified the relevant reporters.



9. Cases accepted and assessed by the Protected Disclosures Commissioner

In certain circumstances where we are unable to identify an appropriate prescribed person or other suitable person who can deal with a report, we are required to accept the report ourselves as the recipient of last resort. During 2023 we accepted 14 reports as the recipient of last resort. We had previously engaged with some public bodies on five of these reports but the bodies provided valid reasons as to why the reports fell outside of their remit.

Four of the 14 cases which we accepted were assessed and closed following further engagement with the reporters. Sometimes this engagement did not give us enough clarity on the reports to conclude that there is any prima facie evidence that a relevant wrongdoing may have occurred. For example, one of the cases related to the conduct, some years previously, of a former employee (a professional in a healthcare setting). We carried out an initial assessment and sought to establish the name and location of the service in question. However, we had insufficient information and were unable to determine that there was prima facie evidence that a relevant wrongdoing may have occurred. The report was anonymous and we were unable, therefore, to gain any further information from the person reporting.

Another case concerned a report relating to the alleged manipulation of an election for a senior position in a sporting body. We assessed the report and found that the alleged wrongdoing did not meet the definition of a “relevant wrongdoing” under the Act and we closed the case on that basis. Part of this report was also transmitted to a Prescribed Person for separate assessment of that element of the report.

The two other cases were also closed on initial assessment, as there was no prima facie evidence that a relevant wrongdoing may have occurred in a work related context.

We received another anonymous report towards the end of the year which had two elements to it. We were able to transmit part of the report to the relevant body. Part of the report related to allegations of domestic abuse against a particular worker. We accepted this part of the report and carried out an initial assessment. We found there was no prima facie evidence of wrongdoing in a work place setting and closed that part of the report. We did, however, refer the allegations of domestic abuse to An Garda Síochána.


The Office was, at the end of 2023, still carrying out initial assessments on the remaining 10 cases accepted for follow-up.

10. Corporate Governance

Corporate Services support for the Office of the Protected Disclosures Commissioner and a number of other statutory Offices, is provided by the Office of the Ombudsman. While the different Offices each carry out separate and distinct statutory functions, the Office functions as a single amalgamated agency in organisational terms. The Office is funded by one Vote and overseen by an Accounting Officer (Director General) who is supported by a Management Advisory Committee. In carrying out their work our staff embrace the traditional obligations of privacy and integrity in the performance of official duties while at the same time protecting and preserving the statutory independence and functions of each of the constituent offices in which they work.

Updates in relation to our Corporate Governance is set out on the [Strategy and Governance page](#) on the website of the Office of the Ombudsman.

This link includes updates in relation to:

- our Strategic Plan 2022-25
 - our compliance with the requirements under the Irish Language Act
 - our compliance with the requirements of the Protected Disclosures Act
 - our compliance with the requirements under s.42 IHREC Act (the duty on public servants in relation to human rights)
 - our Corporate Governance Framework
 - our Green Team (including our compliance with the Climate Action and Low Carbon Development Act)
 - membership of organisations.
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11. Case studies

Case Study: Allegations of wrongdoing in a Day Care service

Background

A man made two protected disclosure reports to the Health Information and Quality Authority (HIQA) regarding Day Care services. HIQA sent these reports to us as it did not have the remit to investigate the allegations in the reports.

We contacted the man to seek clarification on the reports but this was not provided and the man then stopped contact with us.

The reports concern a disability service and support organisation and allege the following wrongdoings by two named staff members:

- Institutional abuse by a manager against service users.
- A manager not holding any social care qualifications required for their role.
- Regular verbal abuse of service users by a named manager and a staff member.
- Eleven thefts from the organisation of money and new cars.

Outcome

As the allegations are of theft in the workplace and the treatment of service users, the Commissioner sent the report to the Chairperson of the disability service organisation. The allegations made were against individuals at a junior level in the organisation and did not include any alleged wrongdoing by senior personnel. In the circumstances of this report, the Commissioner considered that the Chairperson of the organisation would be best placed to properly follow up the allegations, including carrying out an investigation if appropriate, and would be capable of protecting the identity of both the reporting person and the person against whom the allegation was made.

Case Study: Gap in regulation of addiction service

Background

A woman contacted HIQA by email to highlight her concerns about an addiction service facility a family member is attending. The woman said that there was no hot water, no working washing machines and that service users were stopped from accessing water in vending machines. Under the Health Act 2007, as amended, HIQA does not have a remit for addiction services so the report was sent to us.

Outcome

As there was no appropriate 'prescribed person' to whom to transmit this report, and as the allegations related to how residents were being treated in a facility provided by an addiction service, the Commissioner sent the report to the CEO of the addiction service as an 'other suitable' person, as the CEO has oversight over the particular facility.

This case highlights a gap in regulation in that the body established to oversee the quality of service provision in the health sector (HIQA) does not have remit over the particular services that are the subject of the allegations made by the reporter.

Case Study: The 'objection mechanism' in the Protected Disclosures Act

Background

We received a report from an employee who worked with a company offering protective equipment and services. Their role in the company involved the maintenance and servicing of commercial systems for premises used by the public, including a crèche/family resource centre. They alleged that the training received, and methods applied, to carry out the service were not appropriate. We sent the report to the Private Security Authority (PSA) as a Prescribed Person.

Outcome

The PSA objected to us sending the report to it as the specific systems are not security systems and therefore do not fall within the remit of the PSA. We accepted this objection and decided to send the report to the Competition and Consumer Protection Commission (CCPC) as an 'Other Suitable Person'.

This is because it is an offence under section 19(1) of the National Standards Authority of Ireland 1996 to make a representation which is false in any material respect that any commodity, process or practice is of standard specification and this offence can be prosecuted by the CCPC. The CCPC accepted the report. Part of the role of the OPDC when we receive a report of wrongdoing is to identify the most appropriate body to investigate the allegations made in the report. Sometimes the nature of allegations, and the way they are presented, can make it difficult to identify the most appropriate body. It is inevitable that there will be cases where the body we send a report to may not be the best body to deal with the report.

Under the 'objection mechanism' in the Protected Disclosures Act the recipient of a report transmitted by our Office can object to that transmission. Several recipients who have objected to our transmission of reports to them have explained that they objected because other bodies rather than them have the appropriate remit to properly investigate the allegations. In this way we have found that the objection mechanism can be of great assistance in ensuring allegations go to the body best placed to investigate them.

Case Study: Dental Council refuses to accept a report of alleged wrongdoing

Background

We received a report from a dentist employed in a private dental practice. They worked between practice locations for a time before moving full-time to one of them. The dentist alleges that these practices are being managed to the detriment of the clinical care of the patients. While working in their previous practice the dentist informed the practice manager that:

- Unnecessary dental and cosmetic procedures were being carried out in an attempt to maximise fee per hour per dentist as opposed to dealing with patients' best interests.
- Clinical and treatment notes were not recorded.
- Diagnoses were not being made and treatments not recorded.

In their current practice, the dentist, along with a colleague who was also a dentist, made a report regarding the work of two locum dentists alleging that they were:

- Overcharging for their work.
- Not adequately taking notes and medical histories.
- Failing to carry out proper examinations prior to procedures.

Taking the view that the core of the allegations was about the standard of dental care provided to patients, we sent the report to the Dental Council.

Objection by The Dental Council

The Dental Council objected to transmission of the report to it on the grounds that, as the allegations were about how a dental practice is managed rather than about the professional conduct of named dentists, they fall outside the scope of the Dentists Act 1985 which means the Dental Council cannot examine them.

Outcome

The Protected Disclosures Commissioner accepted the objection for those aspects of the report which relate to management of the dental practice. He did not accept the objection regarding the allegations relating to the conduct of dentists as, in his view, those allegations are of professional misconduct, and therefore fall within the remit of the Dental Council under SI 367/2020. Accordingly, the objection in relation to those aspects of the report was not accepted and the allegations relating to the conduct of dentists remained with the Dental Council for follow-up.

The Dental Council responded that they did not accept the Commissioner's position and would not act on the allegations that were transmitted to them. The Commissioner reminded the Dental Council that his decision on whether or not to accept objections to transmission of reports is final. However, the Council repeated its refusal to accept any part of the report.

The Protected Disclosures Commissioner remains of the view that this report should have been assessed by the Dental Council. However, once the Commissioner issues a final decision on objected reports, his role in the matter is finished.

Case Study: Multiple allegations in one report

Background

We received a report from a former worker with allegations concerning misappropriation of funds. There were also allegations of bullying and harassment in the workplace. The man had highlighted the complaint to a number of bodies prior to the formation of the OPDC.

Outcome

We identified a number of Prescribed Persons but decided that the report should be directed to one particular Prescribed Person who would be best placed to carry out an initial assessment and, if there was, on the face of it, evidence of wrongdoing, engage with other bodies as appropriate.

Once a report progresses beyond initial assessment, the Protected Disclosures Act gives a wide scope to recipients of reports as to what further action is appropriate to address the relevant wrongdoing. Appropriate further action could include the referral of wrongdoing to another body for investigation. For example, if it appears that the relevant wrongdoing involves criminality, appropriate further action could include referral to An Garda Síochána for investigation. Similarly, if it appears that part of the relevant wrongdoing merits further investigation or other action by a different regulator, appropriate further action could include referral to that regulator. However, the body responsible for carrying out the initial assessment retains responsibility for continuing to provide feedback to the reporting person on request. The body also has a duty to communicate to the reporting person the final outcome of any investigation triggered by the report.

