



Maoiniú Teaghais–  
Tógála Éireann

Home Building  
Finance Ireland

# Protected Disclosures Policy

Version 7.0

**Please Note: Only print this document if absolutely necessary. Printed versions of this document may be out of date as it will be subject to regular updates.**

### Version Control

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## 1. Introduction

The purpose of this Policy is to promote principles of good corporate governance by providing for the reporting and addressing of concerns about possible relevant wrongdoing as described below. This policy affirms the commitment of Home Building Finance Ireland (“**HBFI**”) to creating a workplace culture that encourages the making of protected disclosures and provides protection for disclosers.

HBFI has adopted procedures (the “**Procedures**”) for the making of disclosures by reporting persons and dealing with those disclosures for the purposes of Section 21 of the Protected Disclosures Act 2014, as amended (the “**Protected Disclosures Act**”), which was amended to transpose the obligations of Directive (EU) 2019/1937, (the “**EU Whistleblowing Directive**”). These Procedures are available on the Intranet or on request from ProtectedDisclosures@hbfi.ie.

This Policy is without prejudice to any mandatory reporting requirements which may apply as a matter of law (including those referred to in section 4 of this Policy). For the purposes of this Policy, the making of any Disclosure is a voluntary matter for a reporting person. However, reporting persons, who are employees of the NTMA assigned to HBFI<sup>1</sup>, should be aware that the HBFI Anti-Fraud Policy<sup>2</sup> requires that any suspicion of fraud must be reported.

Please note that this Policy may be amended from time to time at the discretion of HBFI. Such amendments will be notified to reporting persons at that time.

## 2. Scope

This Policy applies to all reporting persons, as defined below. In this Policy, a “**reporting person**” is a person who comes within the definition of a reporting person in the Protected Disclosures Act, which is set out in Appendix 1.

A “**reporting person**” is a person who comes within the definition of a “**worker**” in the Protected Disclosures Act, which is set out in Appendix 1 to this Policy. This includes, in each case, whether current or former:

- all persons employed by the National Treasury Management Agency (“**NTMA**”) under a contract of employment, whether permanent, part-time or fixed-term and assigned to HBFI;
- consultants, contractors, other persons engaged under a contract for services, secondees, interns, casual reporting persons, agency reporting persons, work experience students and suppliers;
- members of the Board and Committees (whether executive or non-executive);

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<sup>1</sup> In addition to certain contractors/secondees, as the case may be.

<sup>2</sup> The HBFI Anti-Fraud Policy and other NTMA Policies, such as the NTMA Dignity and Respect Policy, and other Procedures referenced within this Policy are published internally within the HBFI and/or NTMA, as appropriate.

- volunteers and unpaid trainees; and
- a person who acquires information on a ‘relevant wrongdoing’ (as defined in the Protected Disclosures Act) during a recruitment process or other pre-contractual process.

This Policy and the Procedures are without prejudice to a reporting person's rights to disclose information as provided for under Section 14 of the National Treasury Management Agency Act 1990 (as amended).

Grievances about interpersonal conflicts between a reporting person and another worker that only affect the reporting person do not come within the scope of this Policy or the Procedures and will be addressed under the NTMA's Dignity and Respect Policy or the NTMA's Grievance Procedure, as appropriate. However, if any such complaint relates to a relevant wrongdoing (as described in section 5 below), HBFI may consider that complaint to come within the scope of this Policy and the Procedures.

For NTMA employees assigned to HBFI, any concerns relating to terms and conditions of employment are outside the scope of this Policy and should be addressed under the NTMA's Grievance Procedure.

If a reporting person is uncertain as to whether something is within the scope of this Policy or the Procedures, he or she should seek advice from the NTMA Compliance Unit.

### 3. Responsibilities

The roles and responsibilities are set out below. In accordance with section 6A(9)(b) of the Act, an internal reporting channel can be provided externally by a third party authorised by an employer. HBFI provides this option in the form of a suitably qualified, independent third-party (“**Nominated Person**”) described below. Such services are periodically procured through the NTMA and are provided in a secure and confidential manner.

#### 3.1 **HBFI Audit & Risk Committee**

- Approval of this Policy insofar as it relates to the functions of HBFI and oversight of its implementation with regard to these functions.
- Oversight of investigations and following the appropriate steps once a Disclosure is made.

#### 3.2 **Nominated Person**<sup>3</sup>

- To make a written report in respect of any Disclosure to the Chairperson of the HBFI Audit and Risk Committee on the reporting person's behalf.

This service is currently provided by Philip Brennan, Managing Director, Raiseaconcern.com, Lodge Park, Straffan, Co Kildare W23 DH39 is the current nominee for this purpose.

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<sup>3</sup> Disclosures made through the Nominated Person will be treated as having been received through an internal channel.

### 3.3 **Chairperson of the HBFI Audit and Risk Committee**

- a) To receive Disclosures from the NTMA Head of Compliance or the Nominated Person and to liaise with the NTMA Head of Compliance to ensure that such Disclosures are properly evaluated and investigated.

### 3.5 **NTMA Head of Compliance**

- a) To act as a central repository for all Disclosures on behalf of HBFI.
- b) To evaluate all such Disclosures and to determine the nature and scope of any necessary investigation and to advise HBFI Audit and Risk Committee of Disclosures made within its remit.

### 3.6 **Line Managers**

- a) To redirect any Disclosures received from their direct reports to the NTMA Head of Compliance (or NTMA Chief Legal Officer, in the absence of the Head of Compliance) without delay.

## 4. **Disclosures of Relevant Wrongdoing**

A “**Disclosure**” is the disclosure of relevant information within the meaning of the Protected Disclosures Act. This is information which, in the reasonable belief of the reporting person making the disclosure (in this Policy, the “**reporting person**”), tends to show one or more “**relevant wrongdoings**” (as defined in Appendix 1), and which information came to the attention of the reporting person in connection with his or her assignment to HBFI or engagement by or with HBFI. The term “reasonable belief” does not mean that the belief has to be correct. The reporting person may be mistaken in their belief, so long as their belief was based on reasonable grounds.

Where a reporting person wishes to make a Disclosure, such Disclosure should be made in accordance with the procedures set out in the Protected Disclosures Act, as summarised in the Procedures. Reporting persons are encouraged to make any such Disclosure as promptly as practicable.

Defined terms, as used in the Protected Disclosures Act, are included at Appendix 1 to this Policy.

Reporting persons should note that a Disclosure may not constitute the discharge of any statutory reporting obligations imposed on them. For example, it does not discharge:

- (i) the obligations of a person under Section 19 of the Criminal Justice Act 2011 to disclose information to a member of the Garda Síochána which he or she knows or believes might be of material assistance in preventing the commission of a relevant offence<sup>4</sup> or securing the apprehension, prosecution or conviction of a person for a relevant offence.

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<sup>4</sup> As defined in section 3 of the Criminal Justice Act 2011. Relevant offences include certain offences relating to banking, investment of funds and other financial activities, company law, money laundering and terrorism, theft and fraud, bribery and corruption, consumer protection and criminal damage to property.

Any queries relating to any of the statutory reporting obligations, should be raised with the NTMA Compliance Unit.

Disclosures will be managed in accordance with the Procedures. Where a report is not considered a Disclosure as defined in this Policy, the individual making the report will be so advised and other options in relation to the matter reported may be discussed.

### **Other Options for Disclosures**

Reporting persons are encouraged to use the internal reporting channels set out in the Procedures for any Disclosures. There are other options for making a Disclosure provided for under the Protected Disclosures Act which may also be applicable to the reporting person. See Appendix 2 for further details. Before a Disclosure is made to any external person or body by a reporting person, they are encouraged to seek advice from the Nominated Person mentioned at section 3.2 above.

It is important to note, however, that while a reporting person need only have a reasonable belief as to a relevant wrongdoing to make a Disclosure through the channels set out in the Procedures, if they are considering making a Disclosure to an external person or body, different and potentially stringent requirements apply (depending to whom the Disclosure is made) in order for that Disclosure to benefit from the protections set out in the Protected Disclosures Act and set out in Section 5 of this Policy.

## **5. Protection of Reporting Persons.**

Each Disclosure will be treated seriously and will be considered on its own facts. The motivation of a reporting person in making a Disclosure is irrelevant when determining whether or not it is a Disclosure protected by the Protected Disclosures Act. The reporting person making the Disclosure will not be asked to prove anything and a reporting person should not pursue his or her own investigations in this regard.

HBFI will seek to protect the identity of a reporting person making the Disclosure and appropriate security measures will be taken to ensure confidentiality of identity. The identity of a reporting person will not be disclosed without their consent, save where the disclosure of their identity is reasonably considered necessary for the purpose of the receipt of, transmission of or follow up on a Disclosure, as required under the Protected Disclosures Act. Moreover, in certain other circumstances, it may be necessary to disclose the identity of a reporting person without first obtaining their consent, for example where disclosure of the identity is required by law. If this arises, the reporting person will be informed before their identity is disclosed unless exceptional circumstances exist, for example, where informing them would jeopardise a related investigation or legal proceedings. If a reporting person is concerned that their identity is not being protected, he or she should notify the NTMA Head of Compliance, or the Nominated

Person as set out in Section 5 of the Procedures, who will assess and take appropriate action where necessary.

The Protected Disclosures Act provides that a reporting person shall not be penalised as a result of making a Disclosure in accordance with the Protected Disclosures Act provided that he or she reasonably believes that a relevant wrongdoing has occurred, is occurring or is likely to occur.

The Protected Disclosures Act defines “penalisation” to mean any direct or indirect act or omission, which occurs in a work-related context, is prompted by the making of a report and causes, or may cause, unjustified detriment to a worker and, in particular, includes:

- a) suspension, lay-off or dismissal;
- b) demotion or loss of opportunity for promotion or withholding of promotion;
- c) transfer of duties, change of location of place of work, reduction in wages or change in working hours;
- d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty);
- e) coercion, intimidation or harassment or ostracism;
- f) discrimination, disadvantage or unfair treatment;
- g) injury, damage or loss;
- h) threat of reprisal;
- i) withholding of training;
- j) a negative performance assessment or employment reference;
- k) failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanent employment;
- l) failure to renew or early termination of a temporary employment contract;
- m) harm, including to the worker’s reputation, particularly in social media, or financial loss, including loss of business and loss of income;
- n) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry;
- o) early termination or cancellation of a contract for goods or services;
- p) cancellation of a licence or permit; and
- q) psychiatric or medical referrals.

A reporting person who believes they have suffered penalisation/detrimental treatment or is concerned about possible penalisation or reprisals should contact the NTMA Chief People Officer and/or the NTMA Head of Compliance. If the NTMA Chief People Officer is contacted by a reporting person in relation to any penalisation or detrimental treatment (actual or possible), he/she will promptly inform the NTMA Head of Compliance, who will then assess/investigate such matter and take appropriate action where necessary.

HBFI, in conjunction with the NTMA, reserves the right to initiate disciplinary action in respect of NTMA employees assigned to HBFI in accordance with the NTMA Disciplinary Procedure in certain circumstances, including but not limited to where any individual is found to have victimised, bullied, harassed or penalised another reporting person or colleague for making a Disclosure.



Where a reporting person has made a Disclosure, the reporting person is still required to conduct themselves professionally and to continue to carry out their duties as normal. Normal management of an employee who has made a Disclosure does not constitute penalisation. This can include the taking of disciplinary action against the reporting person for matters unrelated to the substance of the Disclosure. A reporting person, who has made a Disclosure should not take it upon themselves to assume responsibility for promoting a culture of transparency within HBFI. While all persons should subscribe to such a culture, the promotion and implementation of such measures is a matter for senior management and relevant HBFI/NTMA governance fora.

Where a Disclosure is made in accordance with this Policy, but the allegation is not subsequently upheld by an investigation, no action will be taken against the reporting person and they will be protected from any penalisation where the Disclosure was based on a reasonable belief. However, reporting persons should also be aware that where a reporting person knowingly reports false information, they may not be entitled to the protections under the Protected Disclosures Act and they may be subjected to action, including disciplinary action, up to and including dismissal, in this regard. In addition, the making of a Disclosure does not necessarily confer any protection or immunity on a reporting person in relation to any involvement he or she may have had in the relevant wrongdoing. Furthermore, in general, where a Disclosure is made during an investigation, disciplinary or other process, the Disclosure should not affect those distinct processes, except where the investigation, disciplinary or other action represents, in essence, a form of penalisation for making a Disclosure.

## **6. Annual Reports**

HBFI will prepare and publish an annual report in accordance with Section 22 of the Protected Disclosures Act, as amended.

## **7. Policy Review**

This Policy will be reviewed annually by the HBFI Audit and Risk Committee or more frequently as HBFI considers appropriate.

## APPENDIX 1

### Defined Terms

The following defined terms are contained in section 3 of the Protected Disclosures Act:

**“breach”** means an act or omission:

(a) that is unlawful and to which one or more of the following subparagraphs applies:

1. the act or omission falls within the scope of the Union acts set out in the Annex that concern the following areas:
  - i. public procurement;
  - ii. financial services, products and markets, and prevention of money laundering and terrorist financing;
  - iii. product safety and compliance;
  - iv. transport safety;
  - v. protection of the environment;
  - vi. radiation protection and nuclear safety;
  - vii. food and feed safety and animal health and welfare;
  - viii. public health;
  - ix. consumer protection;
  - x. protection of privacy and personal data, and security of network and information systems;
2. the act or omission affects the financial interests of the Union as referred to in Article 325 of the Treaty on the Functioning of the European Union and as further specified in relevant Union measures; or
3. the act or omission relates to the internal market, as referred to in Article 26(2) of the Treaty on the Functioning of the European Union, including breaches of Union competition and State aid rules, as well as breaches relating to the internal market in relation to acts which breach the rules of corporate tax or to arrangements the purpose of which is to obtain a tax advantage that defeats the object or purpose of the applicable corporate tax law; or;

that defeats the object or purpose of the rules in the Union acts and areas paragraph (a).

**“contract of employment”** means contract of service or apprenticeship, whether express or implied, and (if express) whether oral or in writing.

**“employee”** has the meaning given by section 1 of the Unfair Dismissals Act 1977 and includes an individual who is deemed to be an employee by virtue of subsection (2) (a) of the Protected Disclosures Act.

**“facilitator”** means a natural person who assists, in a confidential manner, a reporting person in the reporting process in a work-related context.

**“feedback”** means the provision to a reporting person of information on the action envisaged or taken as follow-up and on the reasons for such follow-up.

**“external reporting”** refers to a reporting person making a disclosure under Section 7 of the Act to a prescribed person or the Protected Disclosures Commissioner.

**“internal reporting”** refers to a reporting person making a disclosure to their employer under Section 6 of the Act.

**“person concerned”** means a natural or legal person who is referred to in a report as a person to whom the relevant wrongdoing is attributed or with whom that person is associated. Such persons also have certain protections under the Protected Disclosures Act.

**“reporting person”** means a worker who makes a report in accordance with the Act.

**“worker”** means an individual working in the private or public sector who acquired information on relevant wrongdoings in a work-related context and includes:

- (a) an individual who is or was an employee,
- (b) an individual who entered into or works or worked under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertook to do or perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party’s business,
- (c) an individual who works or worked for a person in circumstances in which—
  - i. the individual is introduced or supplied to do the work by a third person, and
  - ii. the terms on which the individual is engaged to do the work are or were in practice substantially determined not by the individual but by the person for whom the individual works or worked, by the third person or by both of them,
- (d) an individual who is or was provided with work experience pursuant to a training course or programme or with training for employment (or with both) otherwise than under a contract of employment,
- (e) an individual who is or was a shareholder of an undertaking,
- (f) an individual who is or was a member of the administrative, management or supervisory body of an undertaking, including nonexecutive members,
- (g) an individual who is or was a volunteer,
- (h) an individual who acquires information on a relevant wrongdoing during a recruitment process,
  - (i) an individual who acquires information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process referred to above),
  - (j) an individual who is deemed to be a worker by virtue of subsection (2)(b),

and any reference to a worker being employed or to employment shall be construed accordingly.

**“work-related context”** means current or past work activities in the public or private sector through which, irrespective of the nature of those activities, persons acquire information

concerning a relevant wrongdoing and within which those persons could suffer penalisation if they reported such information.

The following defined terms are contained in section 5 of the Protected Disclosures Act:

**“protected disclosure”** means a disclosure of relevant information (whether before or after the date of the passing of this Act) made by a worker in the manner specified in the Protected Disclosures Act.

**“relevant information”** means, if:

- (a) in the reasonable belief of the worker, it tends to show one or more relevant wrongdoings, and
- (b) it came to the attention of the worker in a work-related context.

**“relevant wrongdoing”** can be the occurrence (past or ongoing) or likely occurrence of any of the following<sup>5</sup>:

- a) The commission of an offence;
- b) a failure by a person to comply with any legal obligation other than one arising under the reporting person’s contract of employment or other contract whereby the reporting person undertakes to do or perform personally any work or services (such a failure could include, but is not limited to, a failure to comply with public procurement legislation, market abuse/insider dealing legislation, ethics legislation, anti-money laundering and terrorist financing legislation or the legislation governing HBFI);
- c) a miscarriage of justice;
- d) the endangering of the health and safety of any individual;
- e) damage to the environment;
- f) unlawful or improper use of funds or resources of a public body<sup>6</sup> or other public money;
- g) an act or omission by or on behalf of a public body which is oppressive, discriminatory, grossly negligent or constitutes gross mismanagement<sup>7</sup>;
- h) a **“breach”**, as defined in Art 5.1 of the Whistleblowing Directive, i.e. that a breach of European Union law in any of the following areas has occurred, is occurring or is likely to occur: public procurement; financial services, products and markets, and prevention of money laundering and terrorist financing; product safety and compliance; transport safety; protection of the

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<sup>5</sup> The matters listed at (a) to (h) (inclusive) are included in Section 5(3) of the Protected Disclosures Act.

<sup>6</sup> A public body for this purpose (and in (g)) includes HBFI.

<sup>7</sup> This subsection relates to the past or ongoing occurrence of the relevant act or omission, and not a likely occurrence of the act or omission.

environment; radiation protection and nuclear safety; food and feed safety, animal health and welfare; public health; consumer protection; protection of privacy and personal data, and security of network and information systems; the financial interests of the European Union and/or the internal market; or

- i) the concealment or destruction or attempted concealment or destruction of information tending to show any of the above matters listed at (a) to (h).

It is immaterial whether the relevant wrongdoing occurs in Ireland or elsewhere.

## APPENDIX 2

### Other options for disclosure pursuant to the Protected Disclosures Act 2014, as amended

The Protected Disclosure Act allows reporting persons to make a Disclosure to persons other than their employer in certain circumstances as set out below.

#### 1. Other responsible person

Where the reporting person reasonably believes that the relevant wrongdoing relates to the conduct of a person other than HBFI, or to something for which that other person has legal responsibility, then the reporting person can make disclose to that other person.

#### 2. A prescribed person

Certain persons are prescribed by law to receive protected disclosures. This includes the heads or senior officials of a range of statutory bodies. A reporting person may make a Disclosure to a prescribed person if the reporting person reasonably believes that the relevant wrongdoing falls within the remit of the prescribed person and the information contained in the Disclosure, and any allegation contained in it, are substantially true. A list of prescribed persons and a description of matters that can be reported to them is available on 'gov.ie'<sup>8</sup>. For the purposes of enabling the making of Disclosures, prescribed persons and the Protected Disclosures Commissioner are required to establish, maintain and operate independent and autonomous external reporting channels and procedures for receiving and handling such reports and for follow-up of same.

#### 3. A Minister of the Government

Where a reporting person is or was employed in a public body, the reporting person may make a Disclosure to the Minister on whom any function relating to the public body is conferred or imposed by or under any enactment. The Minister with primary statutory functions in respect of HBFI is the Minister for Finance. In order to make a Disclosure to the Minister, the reporting person must reasonably believe that the information contained in the report and any allegation contained in it are true.

In order to make a Disclosure to the Minister, one or more of the following conditions must be met:

- i. the reporting person must have previously made a disclosure of substantially the same information to HBFI or, the Nominated Person (as set out in section 3.2 above), a prescribed person or the Protected Disclosures Commissioner in the manner set out in the Protected Disclosures Act but no feedback has been provided to the reporting person in response to the report within the timeframes for follow-up specified in this Policy and the accompanying Procedures or, where feedback has been provided, the reporting person reasonably believes that there has been no follow up or that there has been inadequate follow up;

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<sup>8</sup> <https://www.gov.ie/en/collection/41798-protected-disclosures-whistleblowing-list-of-prescribed-persons/?referrer=https://www.gov.ie/prescribed-persons/>

- ii. the reporting person must have a reasonable belief that the HBFI Chief Executive is personally complicit in the relevant wrongdoing they wish to report; or
- iii. the reporting person reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.

On receipt of the Disclosure, the Minister will refer the matter to the Protected Disclosures Commissioner.

#### 4. The Protected Disclosures Commissioner

The conditions applying to reporting to the Protected Disclosures Commissioner are set out in section 7 of the Protected Disclosures Act.

Disclosure to the Protected Disclosures Commissioner is an alternative means by which a reporting person can make a report under section 7 of the Act. In particular, the Commissioner can assist where the reporting person is uncertain as to which prescribed person to report to. The Commissioner will transmit the report to the correct prescribed person or to another person the Commissioner considers suitable to follow-up on the report. In exceptional circumstances (e.g. if no prescribed person or suitable person can be found) the Commissioner will follow-up directly on a report.

If a reporting person wishes to make a report to the Commissioner, in addition to having a reasonable belief that the information they report tends to show a relevant wrongdoing, they must also reasonably believe the information they report and any allegation contained in it is substantially true.

The Commissioner has established formal channels for reporting persons to make reports under the Act. Information on how to report to the Commissioner is available at: <https://www.opdc.ie/>.

#### 5. A legal adviser

The Protected Disclosures Act allows a Disclosure to be made by a reporting person in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in section 6 of the Trade Union Act 1941).

#### 6. Reporting to Institutions of the EU

The conditions applying to reporting to institutions of the EU is set out in section 7B of the Protected Disclosures Act.

If the relevant wrongdoing a reporting person wishes to report concerns a breach of European Union (EU) law, as set out EU Directive 2019/1937 on the protection of persons who report breaches of Union law, they can report to a relevant institution, body, office or agency of the EU, provided:

- the reporting person believes the information they wish to report is true at the time of reporting; and
- the information falls within the scope of EU Directive 2019/1937.

A number of these EU institutions have formal channels for receiving reports from reporting persons. A reporting person wishing to make such a report should contact the institution concerned for information in this regard.

#### 7. Alternative external disclosures

As noted in section 5 of this Policy, it is preferable for reporting persons to first make a Disclosure to HBFI using the internal channels set out in the Procedures. **External Reporting** is subject to a higher evidential burden than **Internal Reporting**. Before making a Disclosure or reporting a concern to any external person or body, HBFI would strongly encourage the reporting person to seek advice from their line manager or any of the persons set out in section 3 of this Policy. If an external Disclosure is made, the reporting person should ensure the Disclosure is limited to information relevant to suspected relevant wrongdoing and does not unnecessarily disclose confidential HBFI information unrelated to the alleged wrongdoing.

If making an external Disclosure (**External Reporting**), it is preferable to use one of the options at 1 to 4 above. The Protected Disclosures Act allows the reporting person to make the Disclosure to another party but this is subject to stringent requirements in order for it to qualify as a protected disclosure under the Protected Disclosures Act. For example:

- i. the reporting person must reasonably believe that the information disclosed in the report, and any allegation contained in it, are substantially true; and
- ii. either:
  - a. the reporting person must have previously made a disclosure of substantially the same information to an employer, prescribed person or Minister but no appropriate action was taken within the specified period; or
  - b. the worker must reasonably believe that:
    - I. the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage, or
    - II. if they were to make a report to a prescribed person, or Minister there is a risk of penalisation, or there is a low prospect of the relevant wrongdoing being effectively addressed.