Whistle-blowing and disclosure of wrong doing on health and safety - Q & A.

As a safety rep or steward you may uncover, or have reported to you, wrongdoing and bad practice on issues regarding workers’ health and safety. In the vast majority of cases these will be resolved through discussions with your employer. However occasionally this will not be the case and you may be forced to consider other ways of raising your concerns. The purpose of this information sheet is to detail in the circumstance where the Public Interest Disclosure Act (PIDA) may provide protection for whistle blowers in relation to health and safety matters.

Please also note that this information is aimed at those concerned about workers’ health and safety. If you have a concern about the health and safety of members of the public, students, patients or other vulnerable service users please consult your branch secretary or regional organiser.

This information sheet should be read in conjunction with UNISON’s knowledge section on whistleblowing (see “Additional information”, page 7 of this document). In addition if you or a member is considering whistleblowing it is always best you:

1. Check to see if your concern could be raised informally or through grievance or other standard procedures;
2. consult your employer’s whistleblowing policy;
3. seek advice from a UNISON rep, branch or regional organiser before making a disclosure.

What is whistleblowing?

Whistleblowing is the act of disclosing information about wrongdoing in the workplace. The disclosure may be to your employer, but could also be to a regulator, the police or media.

Aren’t workers protected if they whistleblow on grounds of health and safety?

Only in limited circumstances. A worker is protected under the PIDA if they make a disclosure in the public interest on an issue that is either about a:
danger to health and safety of any individual;
criminal act;
failure to comply with a legal obligation;
damage to the environment;
miscarriage of justice;
attempt to cover up any of these.

This means that if a worker is dismissed or suffers detriment for making any such disclosure, they can claim unfair dismissal. The disclosure must be of information and not an allegation of the above without the relevant factual information.

Since the summer of 2013 a disclosure must be of public interest for it to be covered by PIDA. How this qualification will be interpreted by the courts is (at the time of writing) not entirely clear. It is always best to seek advice from a UNISON rep, branch or region first. Please also note that even it is a matter public concern, it is only covered by PIDA if it meets one of the six qualifiers listed above. Once again always seek advice.

Although it is no longer an absolute requirement, if it is judged the disclosure is not made in good faith it could affect the level of compensation the worker may get.

What matters is the motive for raising the concern, not whether or not an allegation was proved to be true. Therefore to demonstrate good faith you may have to show that your main motive was the health and safety of the worker or other third party, and not some other ulterior motive.

**Why is it important to seek advice before whistleblowing on health and safety public interest concerns?**

1. The law on public interest disclosure is extremely complex. It is therefore always best to get advice from UNISON on how it may apply to your particular concern, before making a disclosure or “blowing the whistle”.
2. Keeping the branch and region informed will enable UNISON to provide more effective representation in the event of you or another member facing recriminations as a consequence of the disclosure.
3. The act encourages workers to use their employer’s internal procedures before making any disclosure. This is supported by ACAS (Advisory, Conciliation and Arbitration Service) guidance (see “Additional Information”). Speaking to the local UNISON safety rep, steward or branch official may help you demonstrate that you have complied with this requirement.

**What should the worker and their reps do if they are considering making a public interest disclosure on the grounds of health and safety?**

1. Make sure that all internal or normal procedures have been exhausted. This may include as explained above consulting with your local reps, and may also involve raising an issue through the joint health and safety committee. For more information
on the role of safety reps and health and safety committees read UNISON’s Health and Safety Representative Guide (stock no. 1684) available from the UNISON Online Catalogue.

2. Check to see if your employer has a whistleblowing policy (preferably jointly agreed with UNISON and other trade unions). Many employers, particularly those in the public sector or providing a public service, will now have one. This may for example provide guidance on disclosing to a prescribed authority (see below). Failure to comply with the procedures set out in such a policy could be used against you or a member in the event of a tribunal hearing.

3. If all of the above fail and you wish to take the matter further (including contacting a prescribed authority) you must seek advice on the disclosure and whether it would be covered by the PIDA before acting.

Yes but if I am a safety rep don’t I have additional legal protection when raising health and safety issues?

The law (Safety Representatives and Safety Committees Regulations 1977) makes it clear that you as a safety rep can represent employees on matters that affect the health and safety of employees and investigate accidents, near misses and other potential hazards and dangerous occurrences. These regulations also give you the right to represent the employees you are appointed to represent in consultations at the workplace with inspectors of the Health and Safety Executive (HSE) and of any other enforcing authority.

However if you were considering proactively contacting or raising an issue with a prescribed authority you would need to ensure any such disclosure is covered by PIDA. This is relatively new legislation and therefore we don’t yet fully know how the courts will interpret this act. We would therefore urge safety reps to adhere to the advice given in this fact sheet and most importantly consult with your branch and region before taking any action that can be interpreted as a public interest disclosure.

Who are the “prescribed” authorities for health and safety concerns?

If you work in England, Scotland or Wales the HSE is responsible for enforcing health and safety in the following types of workplaces:

- factories
- farms
- building sites
- nuclear installations
- mines
- schools and colleges
- fairgrounds
- gas, electricity and water systems
- hospitals and nursing homes
- central and local government premises
- offshore installations
However local authority environmental health departments are responsible for the following:

- offices (except government offices)
- shops
- hotels
- restaurants
- leisure premises
- nurseries and playgroups
- pubs and clubs
- museums (privately owned)
- places of worship
- sheltered accommodation and care homes

There is similar division in Northern Ireland, between HSENI on the one hand, and Northern Ireland’s District Councils on the other.

If you require advice on raising a concern with any of the above enforcing authorities please consult with either your Branch Health and Safety Officer or the UNISON health and safety enquiry point.

Should concerns be raised openly, in-confidence or anonymously?

The member may well have good reason for fearing recriminations, especially with the introduction of Fee for intervention (FFI) (the process whereby those employers that break health and safety laws are liable for recovery of HSE’s related costs, see “Additional information”). For these reasons members and activists may be tempted to raise these concerns either in-confidence or anonymously (where a worker raises a concern confidentially they give their name only on condition that it is not revealed without their consent, whereas when a worker raises a concern anonymously they do not disclose their name).

However there may be disadvantages for both these options.

1. With either option the employer may be able to successfully guess who raised the concern. If this is likely it may be better for the worker or rep if the concern is raised openly.
2. Withholding the name of the informant may hinder the prescribing authority from properly investigating the concern.
3. If a concern is raised anonymously the informant may not get the same protection form PIDA, as they would if it was raised openly or in-confidence.

Again the important thing is to get the best advice you can from your UNISON rep, branch or region on how, given the facts of the case, to proceed.

All of this also underlines that for most workers effective trade union representation is the best way of raising the concern. If the decision to raise a concern is taken collectively, via the branch, it is far harder for employers to victimise individual workers.
What if the complaint is against the enforcing authority?

Each authority should publish details on how to make such complaints. Details on making such complaints to the HSE/HSENI can be seen below (see “Additional information”).
Checklist for safety reps

1. Is the concern of public interest and is it covered by the Public Interest Disclosure Act or;

2. Is it an issue that should be handled through grievance or other standard procedures?

3. Have you tried to resolve it through your employer’s joint Health and Safety Committee?

4. Have you consulted your employer’s whistleblowing policy?

5. Have you asked your branch for advice?

6. Have you asked your regional organiser for advice?

7. Have you established who the correct prescribed authority is? Is it a work related concern?

8. Does the issue raised:
   - Have the potential to cause significant harm or;
   - Involve denial of basic employee welfare facilities or;
   - Constitute a significant breach of law?

9. Is the informant happy to have their identity disclosed?

10. Remember you can also contact the health and safety unit enquiry box at any time for advice or to give us examples of good practice in your workplaces.
Additional information:

UNISON sources:

Whistleblowing overview
http://www.unison.org.uk/knowledge/issues-at-work/whistleblowing/overview/

Grievances overview
http://www.unison.org.uk/knowledge/issues-at-work/grievances/overview/

Hazard reporting overview (including information on FFI, see common questions)
https://secure.unison.org.uk/unisonf0d2bfd2bf1d3bbfa7ac24c0e625b2ff6c26750879/unison1/knowledge/health-and-safety/hazard-reporting/overview/#employer

UNISON Health and Safety Representatives Guide (Stock no. 1684)
https://secure.unison.org.uk/unisonf0d2bfd2bf1d3bbfa7ac24c0e625b2ff6c26750879/unison1/upload/sharepoint/On%20line%20Catalogue/20867.pdf

Health and safety unit enquiry inbox
healthandsafety@unison.co.uk

UNISON online catalogue

Other whistleblowing sites

Public Concern at Work
http://www.pcau.org.uk/

Worksmart: What is ‘whistle blowing’?
http://www.worksmart.org.uk/rights/what_is_whistle_blowing

Thompsons’ whistleblowing framework
http://www.thompsonstradeunionlaw.co.uk/information-and-resources/whistleblowing-framework.htm

Regulatory bodies

Ways to contact HSE
http://www.hse.gov.uk/contact/contact.htm

Who is the correct enforcing authority (England, Wales and Scotland)
http://www.hse.gov.uk/contact/authority.htm

HSENI: Dealing with complaints about unsafe and unhealthy work activities (Northern Ireland)
http://www.hseni.gov.uk/contact-us/complaints-about-work-activities.htm