



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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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.

A handwritten signature in black ink, reading "Elaine Cassidy". The signature is written in a cursive style with a long, sweeping tail that loops back under the name.

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

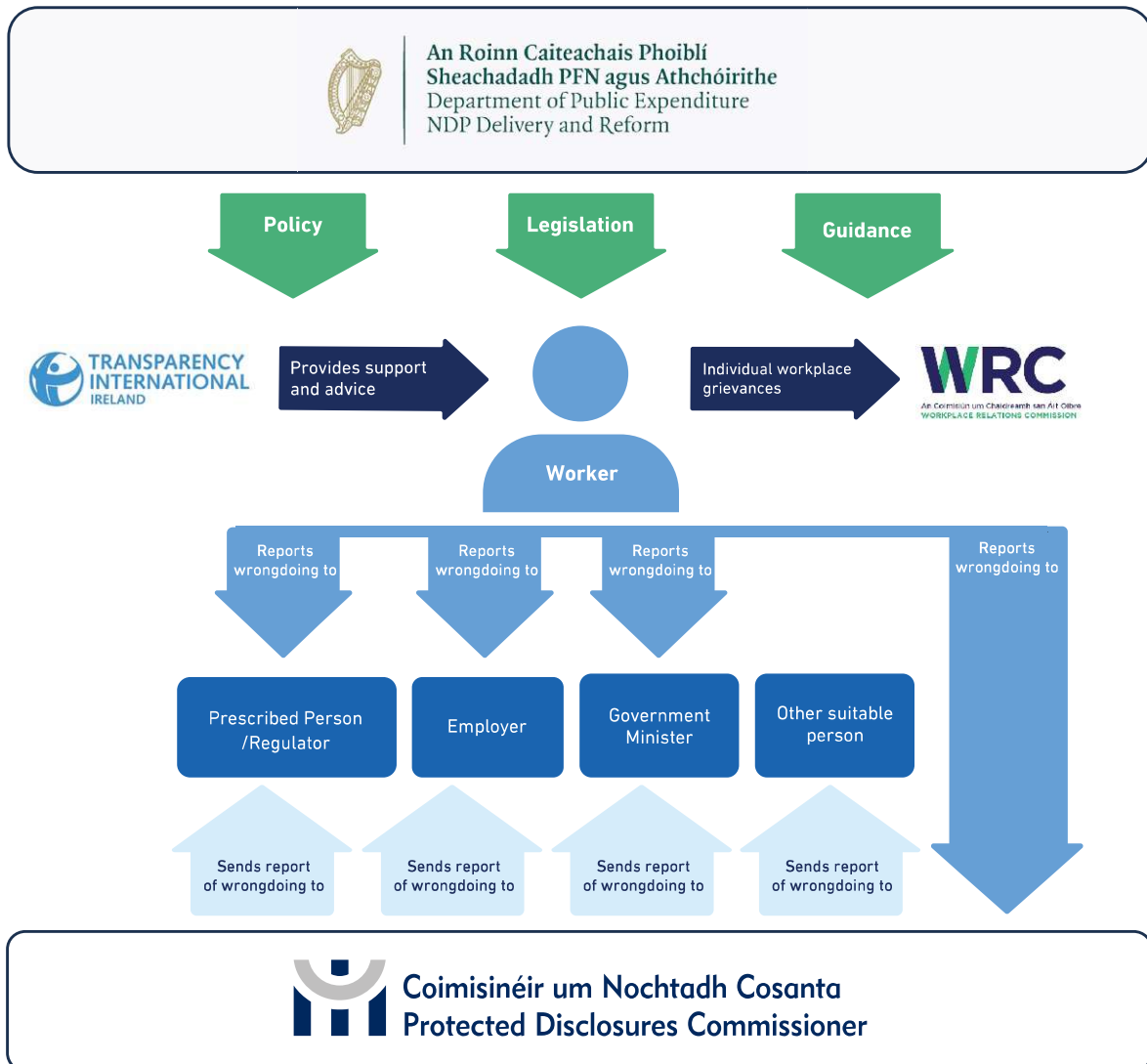
The Act provides for the establishment of our Office – the Office of the Protected Disclosures Commissioner. Our primary function is to send disclosures on to whatever body we believe is best placed to properly follow-up on the allegations set out in them. We are obliged to first identify an appropriate 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.

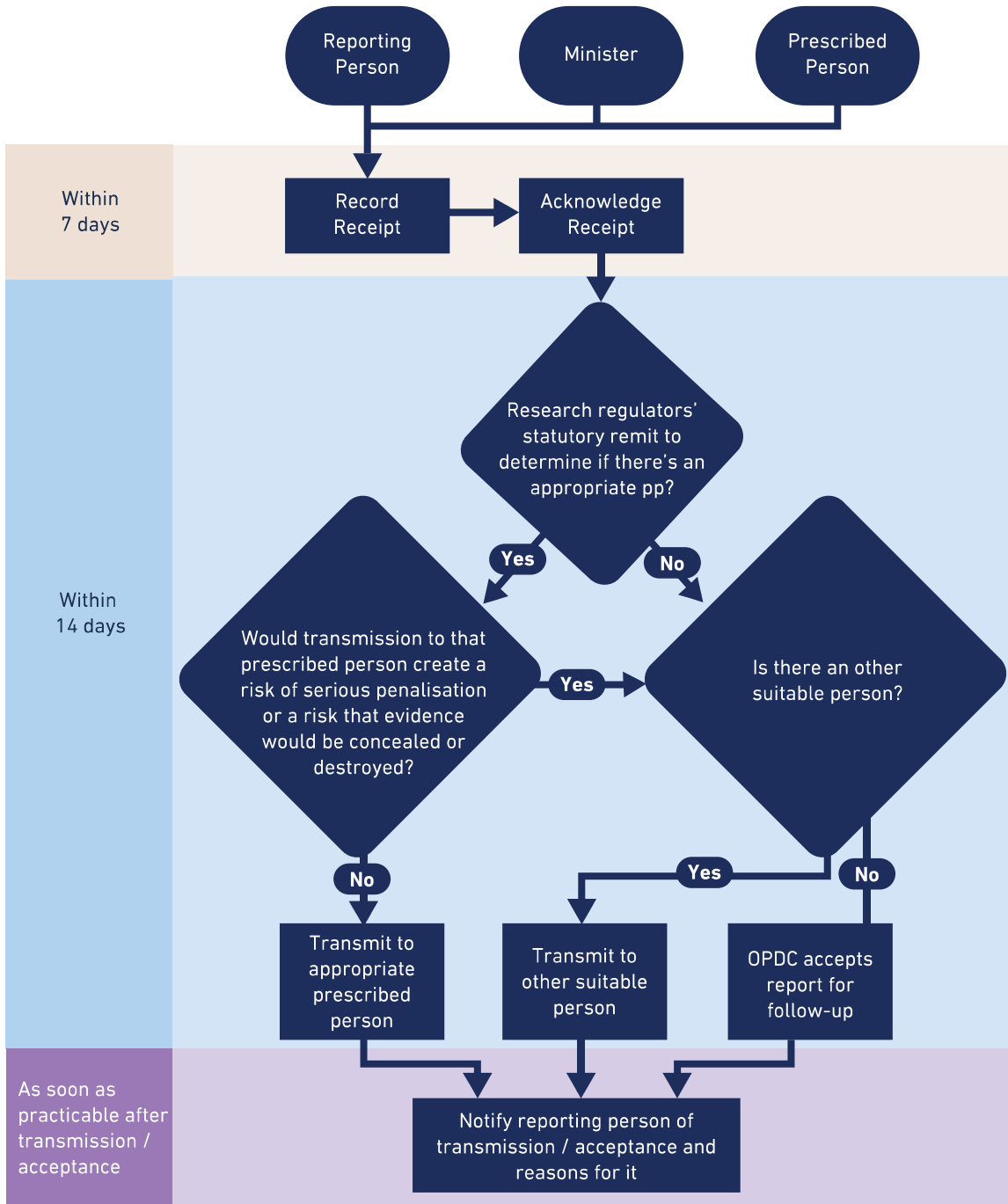
Q. What happens if we cannot identify where to send a report?

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

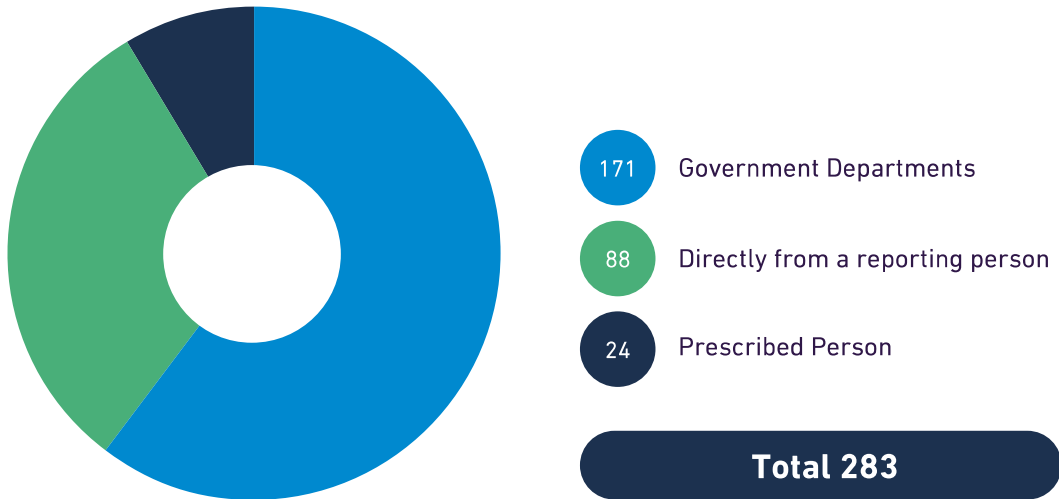
What we did with the reports

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 Policing	21
Nursing/Residential Homes	21
Fisheries	16
Prisons	11
Transport	8
Other	8
	60
Total	283

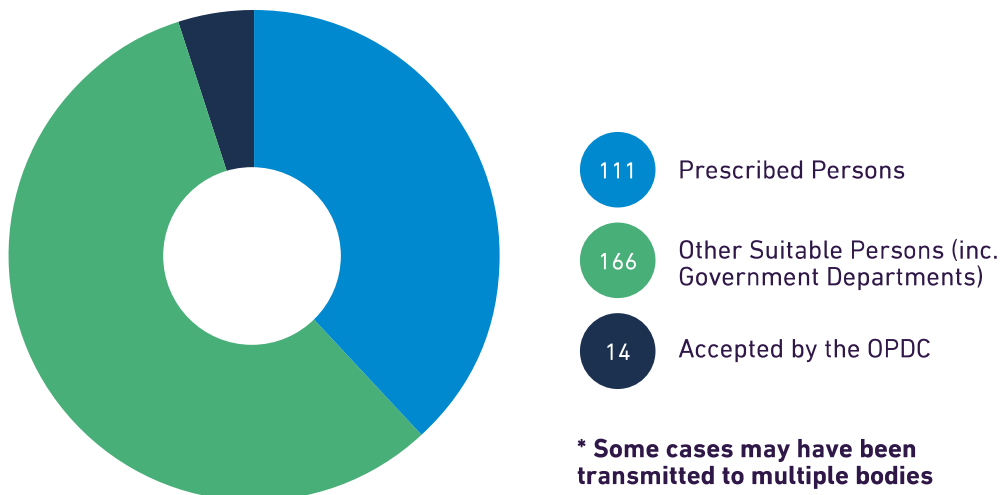
Where did the OPDC receive reports FROM?



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.
- 

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.



Coimisinéir um Nochtadh Cosanta
Protected Disclosures Commissioner

Tuarascáil Bhliantúil 2023

Éascaimid tuairiscí ar éagóir
san ionad oibre

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Oifig an Choimisinéara um Nochtadh Cosanta

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Tuarascáil Bhliantúil 2023

Clár na n-ábhar

Teachtaireacht ón gCoimisinéir um Nochtadh Cosanta	2
Réamhrá ón Ard-Stiúrthóir	4
1. An réimeas Nochtadh Cosanta in Éirinn	6
2. Próiseas agus cur chuige an Choimisinéara maidir le tuarascálacha ar éagóir	10
3. 2023 in uimhreacha	14
4. Saincheisteanna earnála	18
5. Téama ón gcéad bhliain in oifig: Roinnt bearnaí sa rialachán	20
6. Dúshlán a bhí againn le linn ár gcéad bhliain oibriúcháin	22
6.1 Míthuiscint faoi ról ár nOifige	22
6.2 Tuarascálacha leantacha	23
6.3 Tuarascálacha gan ainm	24
6.4 Amlínte dúshlánacha	24
6.5 Cur chuige maidir le tuarascálacha a dhúntar ar mheasúnú tosaigh	25
6.6 Comhlachtaí poiblí gan cainéil Nochtadh Cosanta	25
7. Agóidí i gcoinne ár gcinntí	27
8. Tuarascálacha ina bhfuil níos mó ná líomhain amháin	28
9. Cásanna arna nglacadh agus arna measúnú ag an gCoimisinéir um Nochtadh Cosanta	29
10. Rialachas corparáide	30
11. Cás-Staidéir	31



Teachtaireacht ón gCoimisinéir um Nochtadh Cosanta

Cuireadh tús leis an Acht um Nochtadh Cosanta (Leasú) 2022 (an tAcht), ar an 1ú Eanáir 2023, bunaíodh Oifig an Choimisinéara um Nochtadh Cosanta (OCNC) agus rinne foráil gurb é an tOmbudsman an Coimisinéir um Nochtadh Cosanta freisin. Dá réir sin, ceapadh mé mar an chéad Choimisinéir um Nochtadh Cosanta ar an 1ú Eanáir 2023.

Ba í 2023 an bhliain faoi athbhreithniú, an chéad bhliain d'oibriú na hOifige. Cosúil le bunú aon eagraíochta nua, ba bhliain foghlama agus fáis a bhí sa chéad bhliain, agus ní gan roinnt dúshlán.

Is é príomhchuspóir ár nOifige ná tuairiscí ar éagóir a tharchur chuig an gcomhlacht nó chuig an duine is oiriúnaí chun obair leantach a dhéanamh ar na tuarascálacha sin. I gcúinsí teoranta áirithe, glacaimid le tuarascálacha féin freisin, nuair nach féidir linn comhlacht cuí a aithint a fhéadfaidh déileáil leis an tuarascáil. Feidhmíonn obair ár nOifige chun éagóir a aithint agus chun iad siúd a thuiriscigh aon éagóir a chosaint.

Bíonn misneach agus ciontú ag teastáil chun éagóir a thuirisciú, agus i go leor cásanna, déantar é as braistint láidir dualgais trí ghlaoch a chur ar an éagóir agus stop a chur leis. Cabhraíonn sé chun oibrithe agus an pobal a chosaint má dhéantar éagóir. Tá sé ríthábhachtach go gcosnófar iad siúd a dhéanann tuairiscí dlisteanacha ar éagóir agus go ndéanfaí obair leantach i gceart ar a dtuiriscí.

Tá sé tábhachtach go nglacfaidh eagraíochtaí tuairiscí ar éagóir i ndáiríre. Ba cheart a mheas gur uirlis thábhachtach iad tuarascálacha den sórt sin maidir le dea-rialachas corparáideach, agus chun an éagóir a shainaithint agus chun stop a chur leis. Ní ghlacann eagraíochtaí áirithe leis an dearcadh seo agus léiríonn siad drogall ar dhéileáil le tuairiscí éagóra, ag tairiscint an iliomad cúiseanna nó gnéithe teicniúla gan déileáil le nochtadh.

Le linn ár gcéad bhliain oibriúcháin bhí roinnt cásanna againn ina raibh eagraíochtaí ag brath ar léirmhínte cúng ar an reachtaíocht chun déileáil le tuarascálacha a sheachaint.

Ba cheart d'eagraíochtaí a fhaigheann tuairiscí a bheith aireach ar an bhfíric go bhfuil siad, ní hamháin ag coinneáil lena sainordú dlíthiúil, ach ag cothú agus ag spreagadh cultúr cuntasachta, ionracais agus trédhearcachta, agus ag feabhsú an leas coiteann, trí thuiriscí éagóra a leanúint

suas. Ní dea-rialachas ná bainistíocht, i mo thuairim, é neamhaird a dhéanamh de thuiriscí éagóra nó iad a sheachaint, agus b'fhéidir ligean don éagóir leanúint ar aghaidh, ar bhonn teicniúil.

Tháinig roinnt téamaí chun cinn ónár gcuid oibre le linn 2023. Mar a fheicfear ón tuarascáil seo níl an réimeas nua um nochtadh cosanta d'Éirinn, le go leor gníomhaithe agus céimeanna, simplí agus mar sin is féidir míthuiscint a fháil air. D'fhéadfadh míthuiscint ar ról an OCNC agus a chuid teorainneacha a áireamh leis seo. Tá na daoine a dhéanann tuairiscí agus na daoine a fhaigheann iad míthuiscint ar ár ról.

Leagtar amach sa tuarascáil seo níos mó sonraí faoinár ról agus faoinár bpróiseas, mar aon leis an gcóras iomlán um nochtadh cosanta. Ina theannta sin, leagaimid amach na dúshláin agus na saincheisteanna athfhillteacha eile atá roimh ár n-eagraíocht. Tá céimeanna glactha againn chun tuiscint a fheabhsú ar cad a dhéanann ár nOifig agus táimid tiomanta chun cur leis seo i 2024.

Saincheist eile a chruthaigh dúshláin shuntasacha dár nOifig, agus dóibh siúd a úsáideann ár seirbhís, ná na teorainneacha ama thar a bheith gearr atá leagtha amach inár reachtaíocht rialaithe maidir leis na spriocdhátaí reachtúla faoina gceanglaítear orainn freagairt do thuarascálacha. Creidim go láidir gur cheart na spriocdhátaí éigeantacha seo a leasú chun a chinntiú gur féidir lenár nOifig leanúint ar aghaidh ag obair ar na caighdeáin is airde leis na hacmhainní atá againn.

Léiríonn dúshláin eile a tháinig romhainn saincheisteanna reachtaíochta níos mó ar chóir don Rialtas gníomhú ina leith – go háirithe bearnaí ina bhfuil easpa maoirseachta rialála nó eile aitheanta againn lena n-áirítear san earnáil sláinte. Ní mór aghaidh a thabhairt orthu seo mar ábhar práinne chun an pobal a chosaint.

In ainneoin na ndúshlán seo, d'éirigh leis an gcéad bhliain dár nOifig na córais agus na meicníochtaí a neartú le haghaidh tuairiscithe, agus obair leantach a dhéanamh ar éagóir líomhnaithe san ionad oibre.

Ba mhaith liom buíochas a ghabháil leis an Ard-Stiúrthóir agus le foireann an OCNC as a ndúthracht agus a dtiomantas i mbunú na hOifige agus as bainistiú a dhéanamh ar an líon suntasach nochtadh a fuarthas le linn ár gcéad bhliain oibriúcháin.

Táim ag tnúth le cur leis an méid atá foghlamtha againn le bliain anuas agus le leanúint ag obair go dlúth lenár bpáirtithe leasmhara. Mar fhocal scoir, is cúis áthais dom an chéad Tuarascáil Bhliantúil ó Oifig an Choimisinéara um Nochtadh Cosanta a chur faoi bhráid Dháil Éireann agus Sheanad Éireann de bhun na bhforálacha in Alt 22(9)(a) den Acht um Nochtadh Cosanta (Leasú) 2022.



Ger Deering

An Coimisinéir um Nochtadh Cosanta
Bealtaine 2024



Réamhrá ón Ard-Stiúrthóir

I dtús báire ba mhaith liom buíochas a ghabháil lenár bhfoireann as a gcuid oibre crua i rith na bliana chun ár gcuspóir straitéiseach an-tábhachtach a bhaint amach maidir le cinntiú go raibh Oifig an Choimisinéara um Nochtadh Cosanta (OCNC) in ann feidhmiú go héifeachtach nuair a bunaíodh í. D'oibrigh ár bhfoireann go dian chun próisis oibre a cheapadh a bhí slán agus láidir agus a thacaigh le neamhspleáchas an OCNC, agus chun socruithe éifeachtacha idirchaidrimh a bhunú le gach Roinn rialtais agus le daoine forordaithe chun a chinntiú go gcloítear leis na hamlínte dochta maidir le tuarascálacha a tharchur mar atá leagtha amach san Acht. Chabhraigh na socruithe idirchaidrimh seo go mór agus bhuaileamar le go leor comhlachtaí poiblí i rith na bliana chun ár ról a mhíniú agus a shoiléiriú. Leanaimid de bheith ag spreagadh na gcomhlachtaí poiblí go léir dul i dteagmháil linn.

Toisc gur bunaíodh muid mar chuid d'Oifig an Ombudsman tá ar ár gcumas dul ar an bhfód agus foireann le taithí a bhunú san OCNC leis an meon neamhspleách a theastaíonn chun ár sainchúram an-sonrach a chomhlíonadh. Taobh thiar d'fhoireann OCNC, tá "dromlach corparáideach" againn, a sholáthraíonn na tacaíochtaí cúloifige go léir ionas go mbeidh foireann OCNC ar fáil go hiomlán chun díriú ar obair OCNC. Cuimsíonn an dromlach corparáideach AD, TFC, Airgeadas, Soláthar, Áiseanna, Dlí, Cumarsáid, chomh maith le tacaíocht chun iarratais ar Chosaint Sonraí agus Saoráil Faisnéise a láimhseáil. Rinne an fhoireann TFC dul chun cinn suntasach i 2023 trí go leor dár bhfeidhmeanna tacaíochta a sheachfhoinsiú chuig Oifig Phróimh-Oifigeach Faisnéise an Rialtais (OPOFR) agus trínár Straitéis TFC a ailíniú le straitéis OPOFR. Is é an éifeacht a bheidh aige seo ná ár slándáil sonraí a fheabhsú agus athléimneacht fhadtéarmach a chruthú inár gcórais. Lean ár bhfoireann Dlí ag tabhairt tacaíochta do gach ceann de na hOifigí maidir le cásobair agus imscrúduithe agus rinne siad bainistíocht ar ár gcostas dlí agus ár soláthar le béim ar dhearbhu cáilíochta agus luach ar airgead. Ghlacamar páirt freisin sa chéad bhabhta de Chóras Bainistíochta Airgeadais nua na Státseirbhíse, a bhí ina mhórhionscadal dár bhfoireann Airgeadais agus táim bródúil as an obair a rinne siad air. Bhí siad seo go léir mar chuid de na Cuspóirí Straitéiseacha a leagadh amach inár Ráiteas Straitéise 2022 - 2025.

Agus muid ag druidim lenár dara bliain oibríochta i 2024 táimid ag tnúth le hathbhreithniú a dhéanamh ar ár ndul chun cinn maidir lenár gcuspóirí a bhaint amach. Leanfaimid ag díriú ár bhfor-rochtana ar phríomhpháirtithe leasmhara, ag neartú agus ag feabhsú ár bpróisis oibre chun an tuiscint ar cad a ndéanaimid a mhéadú, agus a chinntiú go ndéantar measúnú agus obair leantach ar thuiriscí éagóra i gceart. Coinneoidimid ár n-oscailteacht agus ár n-inrochtaineacht do dhaoine tuairiscithe agus do dhaoine forordaithe agus do dhaoine oiriúnacha eile.



Elaine Cassidy
Ard-Stiúrthóir

1. An réimeas Nochtadh Cosanta in Éirinn

Is é an taithí atá againn le linn na chéad bhliana oibríochta ná go bhféadfadh mearbhall a bheith ag baint leis an gcóras um nochtadh cosanta a leanúint. Seo thíos cuid de na príomheagraíochtaí a dhéileálann le Nochtadh Cosanta.



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

An Roinn Caiteachais Phoiblí, Sheachadadh PFN agus Athchóirithe

Tá freagracht iomlán ar an Roinn as creat a fhorbairt chun beartas an Rialtais ar Nochtadh Cosanta a chur i bhfeidhm. Cuireadh tús leis an réimeas bunaidh faoin Acht um Nochtadh Cosanta 2014 ar an 15ú Iúil 2014. Achtaíodh an tAcht um Nochtadh Cosanta (Leasú) 2022 chun Treoir 2019/1937 ón AE a chur i bhfeidhm agus cuireadh tús leis ar an 1ú Eanáir 2023. Leasaigh sé seo reachtaíocht 2014, ag nuashonrú an chreata reachtúil bunaidh ar an gcaoi ar cheart déileáil le nochtadh cosanta. De ghrá na héascaíochta, tagaimid “an tAcht” don Acht um Nochtadh Cosanta 2014, arna leasú leis an Acht um Nochtadh Cosanta (Leasú) 2022”.



Fostóirí

Forálann an tAcht go gcaithfidh aon duine ar mian leo nochtadh a dhéanamh a bheith ina “oibrí”¹ de chuid na heagraíochta, mar atá sainmhínithe san Acht, ar mian leo líomhaintí a dhéanamh ina leith. Cuireann an tAcht dualgas ar gach fostóir san earnáil phoiblí agus ar fhostóirí san earnáil phríobháideach a bhfuil 50 ball foirne nó níos mó acu bealaí tuairiscithe inmheánacha a bhunú, a chothabháil agus a oibriú chun tuarascálacha a fháil faoin Acht. Spreagtar oibríthe, nuair is féidir, chun éagóir a ghlaoch ar a bhfostóir ar dtús chun deis a thabhairt dóibh é a chur ina cheart.

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)



An Coimisiún um Chaidreamh san Áit Oibre

Má chreideann oibrithe gur gearradh pionós orthu as nochtadh a dhéanamh is féidir leo dul chuig an gCoimisiún um Chaidreamh san Áit Oibre (CCÁO), a bhfuil an chumhacht aige cúiteamh a dhámhachtain i gcásanna áirithe. Ba cheart go mbeadh a fhios ag oibrithe go bhfuil feidhm ag teorainneacha ama maidir le cásanna a thógáil chuig an CCÁO.



Trédharcacht Éireann Idirnáisiúnta

Forálann an tAcht go gcuirfidh an Roinn meicníocht tacaíochta ar fáil do dhaoine ar mian leo nochtadh a dhéanamh. Tá Trédharcacht Éireann Idirnáisiúnta (TÉI) ainmnithe chun na críche sin. Feidhmíonn TÉI líne chabhrach do chásanna den sórt sin agus cuireann sé seirbhís chomhairle dlí teoranta ar fáil.



Daoine Forordaithe

Forálann an tAcht gur Daoine Forordaithe iad comhlachtaí seirbhíse poiblí áirithe, go príomha rialtóirí, chun déileáil le nochtadh ar leith. Tá Daoine Forordaithe ainmnithe chun nochtadh a fháil go díreach ó aon duine nó comhlacht laistigh dá réimse freagrachta. Is féidir leo freisin nochtadh a tharchur chuig Daoine Forordaithe eile nó chuig an OCNC. Déanann siad é seo nuair nach bhfuil sainchúram orthu leanúint suas ar na líomhaintí atá sa tuarascáil ach go bhfuil siad ar an eolas faoi Dhuine Forordaithe eile a bhfuil a leithéid de shainchúram aige.



Oifig an Choimisinéara um Nochtadh Cosanta

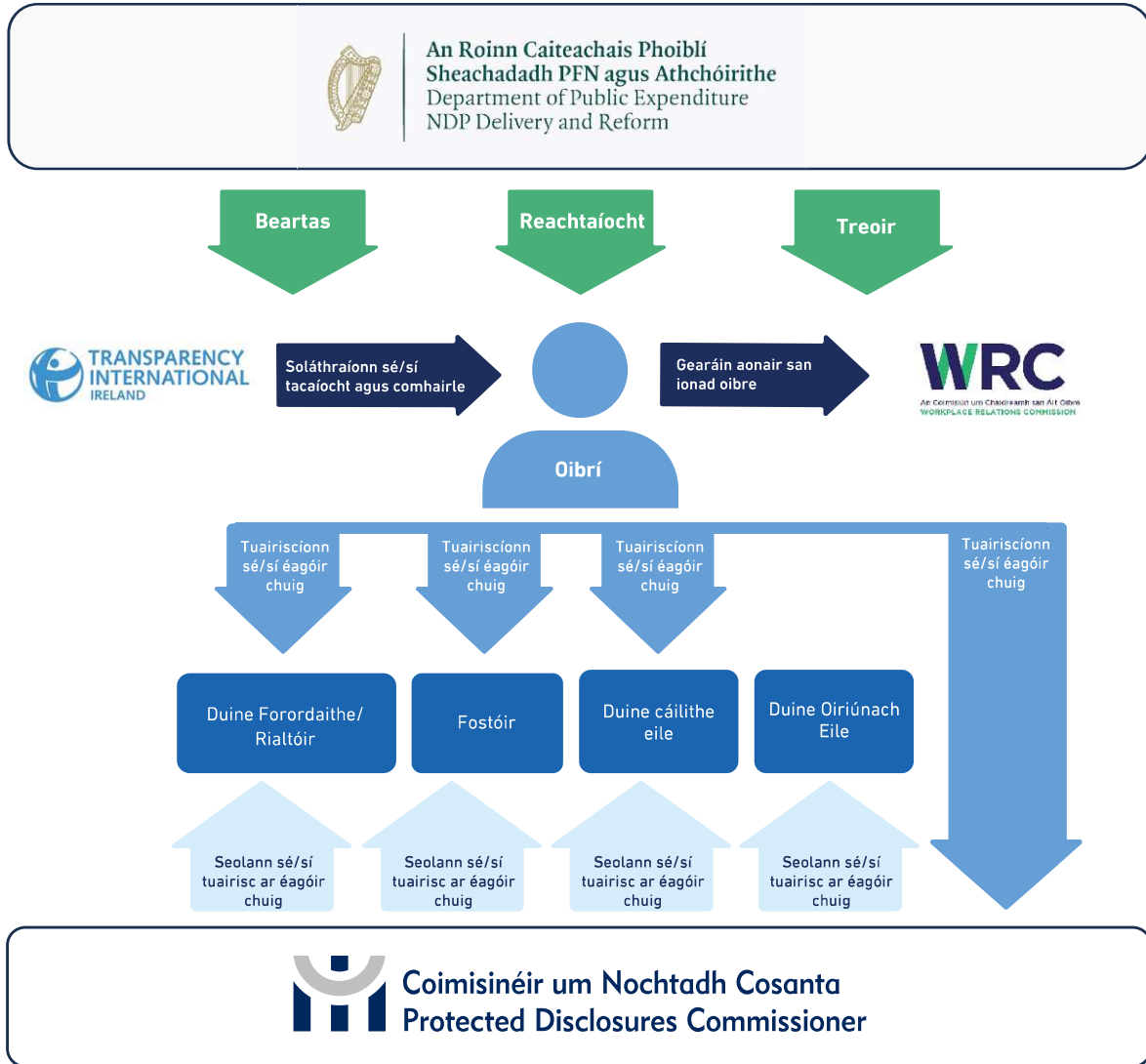
Forálann an tAcht chun ár nOifig a bhunú – Oifig an Choimisinéara um Nochtadh Cosanta. Is í an phríomhfheidhm atá againn ná nochtaí a sheoladh chuig cibé comhlacht a chreidimid atá in ann obair leantach a dhéanamh i gceart ar na líomhaintí atá leagtha amach iontu. Tá sé de dhualgas orainn Duine Forordaithe cuí a shainaitheint ar dtús chun na críche sin, agus mura féidir linn duine a aithint, ní mór dúinn an tuarascáil a tharchur chuig an gcomhlacht is oiriúnaí a mheasaimid a bheith ar an gcomhlacht is oiriúnaí (mar atá leagtha amach san Acht mar Dhaoine Oiriúnacha Eile). Ní féidir leis an OCNC glacadh le tuairisc le haghaidh iarchúram mura féidir faighteoir eile cuí a aimsiú.



Daoine Oiriúnacha Eile

Is comhlachtaí iad seo nach bhfuil ainmnithe mar Dhaoine Forordaithe a measann an OCNC iad a bheith cuí chun an tuarascáil a fháil agus a leanúint. Is féidir leis na comhlachtaí seo nochtaí a fháil ón Oifig seo ach ní féidir leo iad a atreorú chuig Daoine Forordaithe eile.

An réimeas institiúideach um Nochtadh Cosanta in Éirinn



2. Próiseas agus cur chuige an Choimisinéara maidir le tuarascálacha ar éagóir

Déanann formhór na ndaoine teagmháil lena bhfostóir nó le duine forordaithe chun éagóir a bhaineann leis an obair a thuirisciú. Is gnách go mbíonn duine forordaithe ina rialtóir in earnáil na héagóra líomhnaithe. Mar shampla, i gcás tuairisce ina sonraítear sárú ar an dlí comhshaoil, is í an Ghníomhaireacht um Chaomhnú Comhshaoil an duine forordaithe a bhfuil an fheidhm rialála aige.

Toisc gur minic nach mbíonn tuairisceoirí cinnte cá háit ar cheart dóibh a dtuairisc a sheoladh, nó nach mian leo a dtuairisc a sheoladh chuig a bhfostóir, is féidir leo tuairisc a dhéanamh díreach chugainn. Is é an ról atá againn ná tuairiscí ar éagóir a sheoladh chuig an eagraíocht chuí de réir an Achta. I gcúinsí áirithe, déanfaimid obair leantach ar thuirisciú na héagóra mura bhfuil aon eagraíocht chuí eile ann.

Toisc gurb é seo ár dtuarascáil ar ár gcéad bhliain oibríochta, is dóigh linn go bhfuil sé cabhrach ár gcur chuige i leith ár ról a leagan amach thíos.

C. Conas a fhaighimid tuairiscí?


F. Is féidir linn tuairiscí ar éagóir a fháil:

- go díreach ó oibrí
- ó Aire, a bhfuil sé de dhualgas air é a sheoladh chuig an OCNC laistigh de dheich lá tar éis é a fháil nó
- ó 'dhuine forordaithe' i gcúinsí áirithe.

C. Cad a tharlóidh má bhíonn an t-oibrí neirbhíseach faoi thuirisciú?

F. B'fhéidir gur mhaith le duine labhairt le Trédhearcacht Éireann Idirnáisiúnta a bheidh in ann cúnaimh agus comhairle a thabhairt.

Tuigimid go bhféadfadh eagla a bheith ar oibríthe, go háirithe san earnáil phríobháideach, faoi iarmhairtí. Spreagaimid daoine chun labhairt linn sula ndéanann siad tuairisc má tá imní orthu. Is féidir teagmháil a dhéanamh linn ar an nguthán, ríomhphost nó trí ghlaoch chuig ár n-oifig.



C. Cad a dhéanaimid nuair a fhaigheann muid tuairiscí?

F. Is é an chéad chéim atá againn, más gá, ná aon eolas breise nó soiléireacht a lorg ón tuairisceoir. Déantar é seo ar an teileafón nó ríomhphost.

Ní dhéanaimid tuairiscí a scrúdú agus níl ról againn maidir le cinneadh a dhéanamh an bhfuil aon éagóir sa tuairisc, nó an bhfuil an duine ina oibrí.

Déanaimid athbhreithniú ar an tuarascáil chun a fháil amach cé chuige ar cheart dúinn í a tharchur. Is éard atá i gceist leis seo ná taighde a dhéanamh ar an earnáil, ar an tírdhreach rialála agus ar shainchúraimí reachtúla na bhfaighteoirí ionchasacha ar duine forordaithe nó ‘duine oiriúnach eile’ i bhformhór na gcásanna.

C. Cad a tharlaíonn do thuarascálacha gan ainm?

F. Déanaimid ár ndícheall tuarascálacha gan ainm a tharchur. Is minic a bhíonn sé deacair, áfach, saincheisteanna a tuairiscíodh gan ainm a mheas agus a fhiosrú. Ní féidir, mar shampla, tuilleadh faisnéise nó soiléire a lorg ó thuirisceoir gan ainm.

C. Conas a shocraímid cá háit le tuarascálacha a tharchur?

F. Agus cinneadh á dhéanamh maidir le cá háit ar cheart tuairiscí ar éagóir a tharchur, breithnímid na nithe seo a leanas:

- Rúndacht agus sábháilteacht an duine tuairiscithe
- Sainchúram reachtúil daoine forordaithe ionchasacha
- Nádúr an fhostóra agus cibé an earnáil phoiblí nó phríobháideach é
- Méid na heagraíochta agus cibé an bhfuil cainéal nochtá cosanta forbartha i bhfeidhm acu, agus
- An bhfuil duine oiriúnach eile ann.

C. Cad a tharlóidh mura féidir linn duine forordaithe a aithint chun an tuairisc a fháil?

F. Sa chás nach bhfuil duine forordaithe ann ní mór dúinn a chinneadh cé hé/hí an “duine oiriúnach eile” cuí chun an tuairisc a fháil. Tá an t-údarás ag an gCoimisinéir um Nochtadh Cosanta (an Coimisinéir) cinneadh a dhéanamh maidir le cé hé/hí duine oiriúnach agus ní mór don duine sin an tuarascáil a fháil agus gníomhú dá réir.

C. Cad a tharlóidh má tá líomhaintí iolracha ar cheisteanna éagsúla sa tuarascáil?

F. I gcásanna áirithe, d'fhéadfadh go mbeadh líomhaintí iolracha ar shaincheisteanna éagsúla, a thagann faoi shainchúram roinnt faighteoirí éagsúla, i dtuairisc. I gcásanna den sórt sin breithneoidimid an bhfuil sé cuí an tuarascáil a scoilt agus í a chur chuig comhlachtaí éagsúla nó í a sheoladh ina hiomláine chuig comhlacht amháin a mheasaimid atá sa riocht is fearr chun déileáil leis na líomhaintí go léir. Déanaimid tagairt bhreise dó seo i gcuid 9 den tuarascáil seo.

C. Cad a tharlóidh tar éis dúinn a aithint cén áit ar cheart an tuarascáil a sheoladh?

F. Nuair a aithnítear an Duine Forordaithe nó Duine Oiriúnach eile, cuirimid an tuarascáil ar aghaidh chucu. Tá sé tábhachtach a thabhairt faoi deara go dtarchuirimid tuairiscí uaireanta chuig an gcomhlacht a bhfuil líomhaintí déanta ina choinne. Mar shampla, d'fhéadfadh líomhaintí faoi éagóir laistigh de chomhlacht earnála poiblí dul chuig an bPríomhoifigeach Feidhmiúcháin nó chuig Cathaoirleach Bhord an chomhlachta sin. Déanaimid é seo nuair atáimid sásta go bhfuil meicníocht laistigh den chomhlacht chun na líomhaintí a fhiosrú i gceart agus táimid den tuairim nach gcruthóidh tarchur na tuarascála riosca pionós tromchúiseach ar an duine tuairiscithe nó go ndéanfar an fhianaise a cheilt nó a scrios.

C. An bhfuil ról leanúnach againn tar éis dúinn an tuarascáil a sheoladh?

F. Tá ár rannpháirtíocht críochnaithe tar éis dúinn tuairisc na héagóra a chur ar aghaidh chuig na daoine is oiriúnaí. Déanfaidh an eagraíocht sin na bearta iomchuí chun déileáil leis an nochtadh, agus tá oibleagáid dhlíthiúil uirthi obair leantach a dhéanamh ar an tuarascáil. Níl aon ról ag an gCoimisinéir maidir le maoirseacht a dhéanamh ar obair leantach ó chomhlachtaí eile.

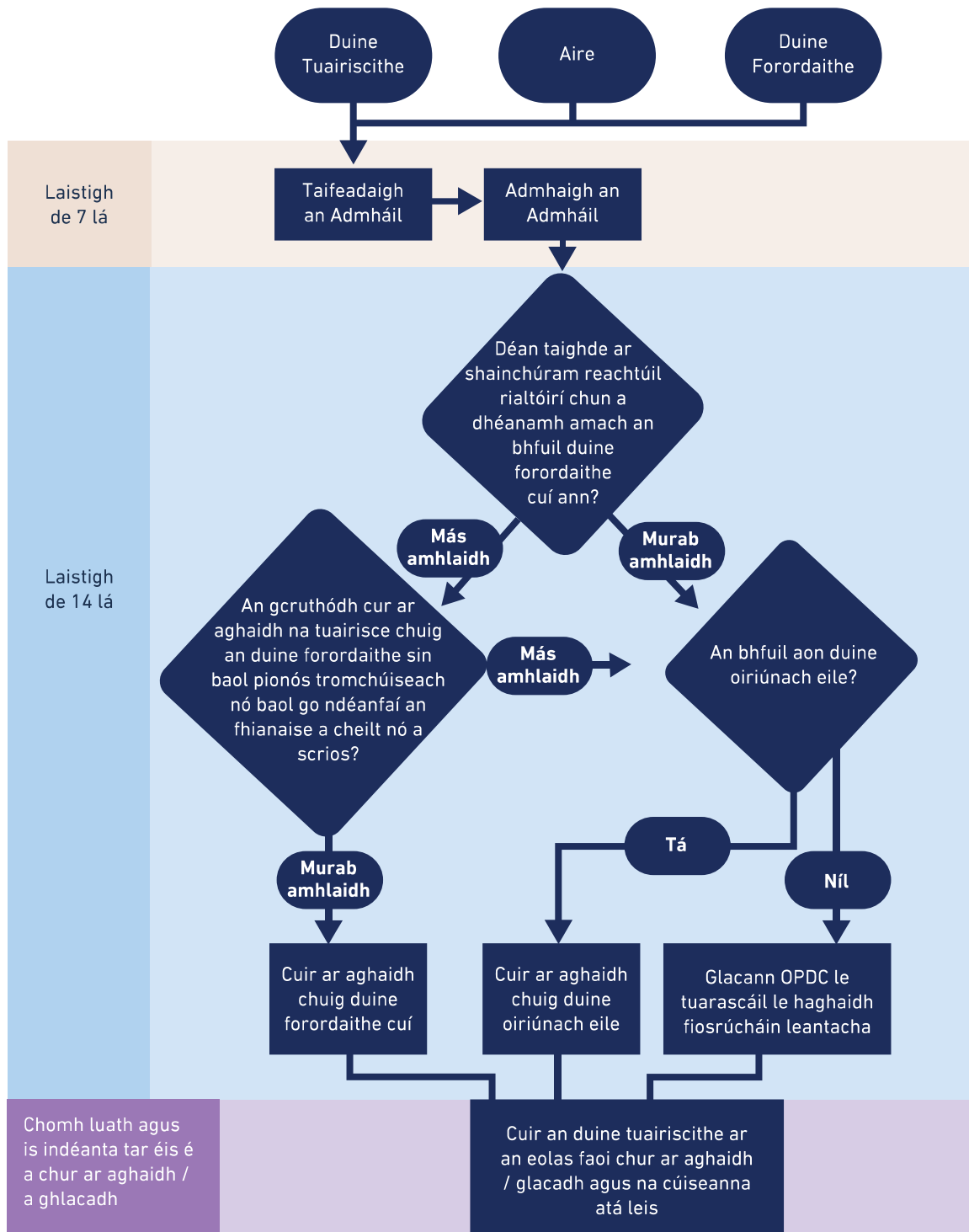
C. Cad a tharlóidh mura féidir linn a aithint cá háit le tuarascáil a sheoladh?

F. Sa chás nach bhfuil duine forordaithe nó duine oiriúnach eile ann, glacfaimid leis an tuarascáil agus déanfaimid measúnú uirthi mar gurb é an Coimisinéir an Duine Forordaithe ainmnithe mar rogha dheireanach.

C. Cad a tharlaíonn do thuairiscí éagóra a fhaightear roimh an 1ú Eanáir 2023?

F. Tháinig an córas nua agus ár nOifig araon i bhfeidhm ón 1ú Eanáir 2023. Níl feidhm ag an gcóras nua maidir le tuairiscí ar éagóir a fuair comhlachtaí eile roimh an 1ú Eanáir 2023. Ina áit sin, foráiltear ann go dtabharfar tuarascálacha den sórt sin i gcrích i gcomhréir leis an réimeas bunaidh san Acht um Nochtadh Cosanta 2014. Mar sin, níl aon ról ag ár nOifig maidir le tuarascálacha a fuarthas roimh an 1ú Eanáir 2023. Le linn 2023 fuaireamar 2 thuairiscí a seoladh chuig comhlachtaí ábhartha faoin gcóras bunaidh roimh an 1ú Eanáir 2023 agus sheolamar ar ais iad go dtí na comhlachtaí/tuairisceoirí a sheol chugainn iad le leanúint ar aghaidh leis na tuarascálacha sin ar dtús.

Oifig an Choimisinéara um Nochtadh Cosanta: Amlínte agus próiseas



3. 2023 in uimhreacha

Fuaireamar **283** tuairisc ar éagóir líomhnaithe i 2023

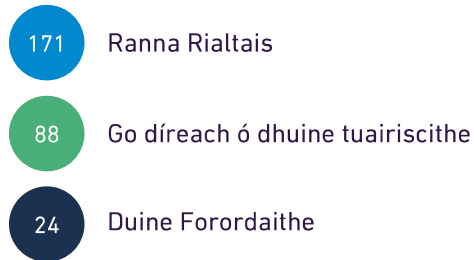
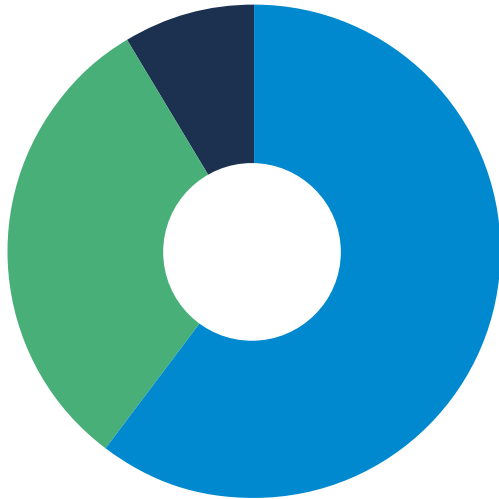
Cad a rinne muid leis na tuarascálacha:

Tarchurtha chuig Daoine Forordaithe / Daoine Oiriúnacha Eile		267
Dhéileáil an OCNC leo		14
Críochnaithe	4	
Ar lámh	10	
Ar lámh agus ag fanacht le tarchur i 2024		2
Iomlán		283

Tuarascálacha faighte de réir earnála:

Cosaint	42
Leighis	39
Tithe Altranais/Cónaithe	34
Oideachas	23
Aerlíne	21
Údarás Áitiúil	21
Póilíneacht	16
Iompar	11
Iascaigh	8
Príosúin	8
Eile	60
Iomlán	283

Cén áit a bhfuair an OCNC tuarascálacha?

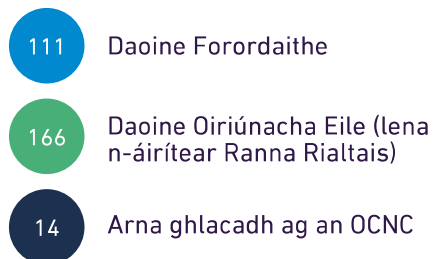
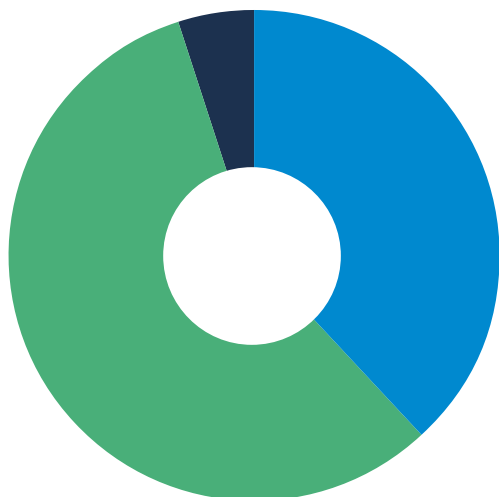


Iomlán 283

Na 5 Roinn Rialtais is mó a tharchuir tuarascálacha chuig an OCNC:

An Roinn Cosanta	26
An Roinn Dlí agus Cirt	26
An Roinn Oideachais	25
An Roinn Iompair	17
Oifig an Taoisigh	17

Cá dtarchuireann an OCNC tuairiscí chuig?*



* D'fhéadfadh cásanna áirithe a bheith tarchurtha chuig comhlachtaí iolracha

Na 5 Roinn Rialtais is mó a chuireamar tuarascálacha ar aghaidh chuig:

An Roinn Cosanta	24
An Roinn Oideachais	23
An Roinn Dlí agus Cirt	10
An Roinn Tithíochta, Rialtais Áitiúil agus Oidhreachta	8
An Roinn Fiontar, Trádála agus Fostaíochta	8

Na 5 Dhuine Forordaithe/Duine Oiriúnach eile is mó ar tharchuireamar tuarascálacha chuig:

An Coimisiún um Iomaíocht agus Cosaint Tomhaltóirí	27
Feidhmeannacht na Seirbhíse Sláinte	14
Údarás Eitlíochta na hÉireann	11
Coimisiún Ombudsman an Gharda Síochána	10
Banc Ceannais na hÉireann	8

Líon na dtuarascálacha arna gcur isteach ag daoine tuairiscithe aonair

Líon na ndaoine tuairiscithe	Nochtuithe arna gcur isteach ag an duine tuairiscithe
118	1
8	2
7	3
3	4
2	5
1	6
1	8
1	21
1	35
1	36

4. Saincheisteanna earnála

Fuaireamar tuairiscí ar éagóir líomhnaithe i ndáil le roinnt earnálacha. Seo iad na hearnálacha leis an líon is mó tuarascálacha:

Oideachas

I rith 2023 fuaireamar 17 dtuairisc ag líomhain éagóir i scoileanna dara leibhéal. Astu seo, tagann 12 de na scoileanna faoi shainchúram na mBord Oideachais Oiliúna cuí.

Thug an Coimisinéir faoi deara, cé nach é an ról atá aige obair leantach a dhéanamh ar na líomhaintí i dtuarascálacha a tharchuireann an Oifig seo chuig comhlachtaí cuí, is díol suntais é mar sin féin go dtagann an oiread sin de na tuarascálacha a bhaineann le scoileanna ón earnáil BOO. As na 17 dtuarascáil a bhí i gceist, tharchuir an Oifig seo trí cinn ar ais chuig an BOO i gceist agus aistríodh na 14 cinn eile chuig an Roinn Oideachais. Ba é an dearcadh a bhí aige, sa chás nár bhain na líomhaintí le pearsanra sinsearach laistigh den Bhord Oideachais agus Oiliúna ábhartha, go raibh sé cuí de ghnáth an tuarascáil a tharchur chuig an mBord Oideachais agus Oiliúna ábhartha le haghaidh leantach. Mar sin féin, i gcás inar bhain na líomhaintí le pearsanra níos sinsearaí laistigh den BOO, bhí faighteoir ón Roinn níos oiriúnaí. Mar sin féin, breithníodh gach tuarascáil ar a fíricí ar leith.

Cosaint

Áirítear leis an earnáil seo Óglaigh na hÉireann, an Roinn Cosanta agus Ombudsman Óglaigh na hÉireann. Fuaireamar 34 tuairisc san iomlán maidir leis an earnáil seo ó sheisear tuairisceoirí éagsúla i 2023. Líomhain deich gcinn de na tuarascálacha go ndearna siad éagóir ar na tuairisceoirí féin. Bhí moltaí ann freisin maidir le nochtadh roimhe seo agus easpa gníomhaíochta nó gníomh míchuí ina leith.

Bhí gá le breithniú cúramach a dhéanamh ar fhíricí agus ar chúinsí ar leith gach tuairisce sula ndearnadh cinneadh ar an bhfaighteoir cuí le tabhairt faoi obair leantach. Tarchuireadh 24 cás chuig an Roinn Cosanta, aistríodh 2 chás chuig an gCeann Foirne in Óglaigh na hÉireann agus ghlac an OCNC le 5 chás le leanúint suas.

Údarás Áitiúil

I rith na bliana fuair ár nOifig 23 tuairisc ag líomhain éagóir in earnáil na n-údarás áitiúil. Is duine forordaithe é Príomhoifigeach Feidhmiúcháin an údaráis áitiúil iomchuí maidir le feidhmeanna údaráis áitiúil faoi aon achtachán, mar sin ní mór gurb é an chéad bhreithniú a dhéanfaidh an OCNC maidir le tuarascálacha údaráis áitiúil cibé an duine forordaithe cuí an POF. Mar atá déanta againn maidir le hearnálacha eile, is é an cur chuige is gnách atá againn ná tuairiscí a tharchur chuig POF an údaráis áitiúil ábhartha nuair atáimid sásta nach bhfuil baint ag an tuarascáil leis an bpearsanra is sinsearaí, sa chaoi is nach mbeadh an POF ina dhuine forordaithe cuí sna himthosca. Bhí sé níos dúshlánaí i gcleachtas tuarascálacha a bhaineann leis an bPríomhoifigeach Feidhmiúcháin nó le Comhairleoirí tofa, ar na cúiseanna atá leagtha amach thíos.

Tá freagracht iomlán earnála ar an Roinn Tithíochta, Rialtais Áitiúil agus Oidhreachta as earnáil na n-údarás áitiúil. Chuireamar ocht gcás údaráis áitiúil ar aghaidh chuig an Roinn i 2023. Chuir an Roinn i gcoinne sé cinn de na tarchuir seo. Níor ghlacamar leis, áfach, gur thit na tuarascálacha lasmuigh dá sainchúram. Is ábhar imní don Roinn nach é ról an Aire ná na Roinne idirghabháil a dhéanamh leis an rialtas áitiúil. Ag am foilsithe, tá plé ar an bpointe seo ar siúl idir ár nOifig agus an Roinn Tithíochta, Rialtais Áitiúil agus Oidhreachta.

5. Téama ón gcéad bhliain in oifig: Roinnt bearnaí sa rialachán

Forálann an reachtaíocht nach nglacfaidh an Coimisinéir um Nochtadh Cosanta le tuarascálacha ach mar rogha dheireanach.

Admhaíonn an Coimisinéir an réasúnaíocht atá leis an bpost seo. Cé go bhfuil cumhachtaí imscrúdaithe ag an gCoimisinéir chun obair leantach a dhéanamh, níl aon chumhachtaí forfheidhmithe nó smachtbhanna ag an gCoimisinéir maidir le héagóra, mar sin beidh toradh aon leantacha teoranta do thuarascáil agus/nó do tharchur chuig comhlacht a bhfuil an chumhacht chuí aige/aici chun gníomh a dhéanamh. Go praiticiúil, ní féidir linn saineolas a fhorbairt go indéanta i ngach réimse earnála ar fud an tírdhreacha fostaíochta.

Le gur féidir obair leantach fíor-éifeachtach a dhéanamh, ba cheart go mbeadh faighteoir tuarascála in ann aghaidh a thabhairt ar an éagóir, go mbeadh saineolas earnála cuí aige, agus go hidéalach go mbeadh an chumhacht aige athruithe córais a chur i bhfeidhm nuair is gá. Tá sé seo lasmuigh de raon an méid is féidir leis an gCoimisinéir a bhaint amach.

Is léir ónár dtaithí le linn 2023 go bhfuil bearnaí rialála ann in earnálacha áirithe, rud a chiallaíonn go mb'fhéidir nach dtabharfar aghaidh ar an éagóir i gceart. Is féidir leis an gCoimisinéir a thabhairt chun suntais don Rialtas cá bhfuil bearnaí rialála ann. Ba chóir don Rialtas ansin machnamh cúramach a dhéanamh ar conas ba cheart na bearnaí rialála seo a líonadh, agus athrú reachtaíochta a chur i bhfeidhm nuair is gá.

Tá formhór na bearnaí sa rialachán atá aitheanta againn san earnáil chúraim, agus go háirithe i suíomhanna cónaithe comhchruinnithe príobháideacha (seachas tithe altranais príobháideacha), ospidéal phríobháideacha agus maidir le saincheistanna neamhleighis i gcleachtais príobháideacha leighis agus fiacloireachta.

Socruithe comhchruinnithe príobháideacha

I rith 2023 fuaireamar 11 tuairisc ina raibh líomhaintí faoi éagóir i suíomhanna cónaithe comhchruinnithe príobháideacha. Níl freagracht shonrach reachtúil ar ÚFCS ná ar FSS as na háiseanna seo. Tuairiscíodh ocht gcinn de na tuarascálacha seo don ÚFCS ar dtús ach toisc nár tháinig na líomhaintí faoina sainchúram, chuir siad chuig ár nOifig iad, mar a fhoráiltear san Acht. Áiríodh sna tuarascálacha a fuaireamar ó ÚFCS líomhaintí faoi dhrochchoinníollacha in ionad athshlánúcháin drugaí, mí-úsáid úsáideoirí seirbhíse, agus gadaíocht ó eagraíochtaí. Maidir le cuid de na tuarascálacha seo, d'aithníomar gurb é an FSS an faighteoir is oiriúnaí do thuarascálacha maidir leis na cineálacha líomhaintí seo i bhfianaise a róil mhaoirseachta don earnáil sláinte ina hiomláine, agus dá bhrí sin chuireamar roinnt de na tuarascálacha seo chuici.

Cé gur mheasamar gurb é an FSS an faighteoir is oiriúnaí do thuarascálacha den sórt sin, ciallaíonn an fhíric nach bhfuil freagracht reachtúil ar leith ar an FSS as na réimsí seo nach bhfuil sé in ann obair leantach a dhéanamh ar na líomhaintí agus a bheadh i gceist dá ndéanfaí, nó comhlacht cuí eile, ar tugadh an fhreagracht sin dó mar aon leis na cumhachtaí a bhí riachtanach chun tuarascálacha den sórt sin a imscrúdú agus a leanúint. Cuirimid níos mó sonraí ar fáil thíos ar dhá chás den sórt sin.

Ospidéal phríobháideacha

Fuaireamar dhá thuarascáil faoi chomhairleoirí leighis atá fostaithe ag ospidéal phríobháideacha. Toisc gur ospidéal phríobháideacha iad na hospidéal níl de chúram ar an FSS na líomhaintí a fhiosrú. Chuir an tuairisceoir i gceann de na cásanna go leor faisnéise ar fáil dúinn chun na comhairleoirí a ndearnadh na líomhaintí ina leith a shainaithint agus, ar an mbonn sin, chuireamar an tuarascáil ar aghaidh chuig POF Chomhairle na nDochtúirí Leighis mar an duine forordaithe cuí. Mheasamar gur bhain na saincheistanna a ardaíodh sa dara tuarascáil le sábháilteacht ghinearálta othar agus le cáilíocht iomlán an chúraim a bhí á fháil acu. D'aithníomar Stiúrthóir Altranais an ospidéal i gceist mar an faighteoir is oiriúnaí chun an tuarascáil a láimhseáil.

Táthar ag súil go gcuirfear tús leis an Acht um Shábháilteacht Othar (Teagmhais Infhógartha agus Nochtadh Oscailte), 2023 i mbliana. Leathnóidh sé seo feidhmeanna ÚFCS maidir le monatóireacht agus socrú caighdeáin ospidéal phríobháideacha. Fáiltímid roimh an leathnú seo ar shainchúram ÚFCS.

Cleachtais phríobháideacha fiacloireachta agus leighis ghinearálta

Fuaireamar dhá chás inar bhain nó inar áiríodh leis na líomhaintí éagóir líomhnaithe ag oibrithe cúram sláinte nár ghairmithe leighis rialaithe iad. Níl aon rialáil neamhspleách ar dhaoine neamhghairmiúla a bhíonn ag obair sna cleachtais sin do chleachtais phríobháideacha fiacloireachta agus leighis. Ciallaíonn sé seo nach féidir tuairiscí ar éagóir a d'fhéadfadh tionchar suntasach a bheith aige ar othair, amhail drochbhearta rialaithe ionfhabhtuithe, a tharchur chuig rialtóir cuí le haghaidh obair leantach. Is é ár dtuairim gur gá aghaidh a thabhairt ar an mbearna seo ar mhaithe le hoibrithe sna timpeallachtaí sin agus, ar deireadh, chun leasa na n-othar.

Cúram sláinte eile

Seachas na trí chatagóir dá dtagraítear thuas, fuaireamar trí thuarascáil is fiche freisin ag líomhain leibhéal éagsúla de mhí-iompar gairmiúil ag gairmithe sláinte i suíomhanna éagsúla, lena n-áirítear ospidéal phoiblí agus tithe altranais. Tá gairm na míochaine á rialú ag roinnt rialtóirí lena n-áirítear Comhairle na nDochtúirí Leighis (dochtúirí), an Bord Altranais agus Cnáimhseachais (altraí agus cnáimhsí cláraithe), agus an Chomhairle Fiacloireachta (fiacloirí). Ciallaíonn sé seo go bhfuil rialtóirí cuí ann ar féidir linn líomhaintí i gcoinne gairmithe leighis i ndisciplíní éagsúla a tharchur chucu.

6. Dúshláin a bhí againn le linn ár gcéad bhliain oibríúcháin

Sa chuid seo den tuarascáil leagtar amach cuid de na dúshláin ar dhéileálar leo le linn ár gcéad bhliain oibríochta.

6.1 Míthuiscint faoi ról ár nOifige

Uaireanta déantar míthuiscint ar ról ár nOifige. Ós rud é gurb é ár gcéad bhliain oibríochta é, táthar ag súil le heaspa feasachta áirithe. Tá iarracht déanta againn thíos aghaidh a thabhairt ar chuid de na míthuiscintí is coitianta. Tá súil againn go méadóidh an tuarascáil seo agus ár ngníomhaíochtaí for-rochtana amach anseo feasacht ar ár sainchúram agus ár bhfeidhm.

- **Ní comhlacht achomhairc an Coimisinéir**

Ní fheidhmíonn ár nOifig mar chomhlacht achomhairc maidir le himscrúduithe a rinneadh nó cinntí a dhéanann comhlachtaí gan líomhaintí a imscrúdú go foirmiúil. Is é ról na hOifige seo ná an faighteoir is oiriúnaí a shainnithint chun tuairisc a dhéanamh ar éagóir. I go leor cásanna, is é an faighteoir is oiriúnaí an comhlacht céanna a rinne an líomhain chéanna maidir le héagóra roimhe seo. Ní cúis ann féin é míshástacht tuairisceora le tuairisc leantach comhlachta gan an tuarascáil a tharchur chuig an gcomhlacht sin lena breithniú. Samhlaíonn an reachtaíocht go sonrath go bhféadfaidh comhlachtaí tuarascálacha athfhillteach ar mheasúnú tosaigh a dhúnadh mura gcomhlíontar critéir áirithe, rud a thugann le fios go bhféadfadh sé go mbeadh faighteoir bunaidh tuarascála ar an gcomhlacht is oiriúnaí chun measúnú tosaigh a dhéanamh.

- **Níl feidhm ag an gCoimisinéir tuarascálacha a mheasúnú (nó a “seiceáil”)**

Forálann an tAcht gur féidir cásanna a dhúnadh mura gcomhlíonann tuairisc coinníollacha áirithe. Is eol dúinn go bhfuil dearcadh ag cuid acu go ndéanfaidh an Coimisinéir “seiceáil” ar thuairiscí sula dtarchuirfidh siad chuig faighteoir cúí iad, mar shampla trí chinneadh an bhfuil an tuairisceoir ina ‘oibrí’ nó an gcomhlíonann na líomhaintí an sainmhíniú ar ‘éagóir ábhartha’ faoin Acht. Ní dhéanann an Coimisinéir “seiceáil” ar thuarascálacha sula dtarchuirtear iad, toisc go bhfuil na hábhair seo le breithniú ag an bhfaighteoir agus measúnú tosaigh á dhéanamh ar an tuarascáil mar chuid den obair leantach. Ní dhéanfaidh an Coimisinéir an measúnú tosaigh ach amháin sa chás go nglacann an Coimisinéir leis an tuarascáil le haghaidh obair leantach.

- **Níl maoirseacht leanúnach ag an gCoimisinéir ar thuarascáil nuair a tharchuirtear chuig faighteoir cúí í**

Is léir go bhfuil roinnt tuairisceoirí ag súil go mbeidh ról maoirseachta ag ár nOifig maidir lena dtuarascálacha, go háirithe má bhraitheann siad nach ndearna an faighteoir obair leantach, nó nár thug siad aghaidh ar na líomhaintí atá sa tuarascáil go cúí.

Chun ionchais ar an bpointe seo a bhainistiú, cuirimid in iúl go sainráite do thuairisceoirí nach bhfuil aon ról againn faoin Acht maidir le maoirseacht nó maoirsiú a dhéanamh ar obair leantach ar chásanna tarchurtha, agus go dtagann deireadh lenár ról reachtúil nuair a tharchuirtear an tuarascáil.

Tá tuairiscí faighte againn i gcás inarb ionann an éagóir líomhnaithe féin agus teip ag faighteoir a admháil go bhfuarthas tuairisc, beart a dhéanamh ina leith, nó, i gcás ina ndearnadh gníomh leantach, nár thug gníomh leantach aghaidh ar na líomhaintí substainteacha i dtuairisc. Mar atá leagtha amach thuas, ní comhlacht achomharc é an Coimisinéir. I gcásanna den sórt sin, cuirimid in iúl do thuairisceoirí arís na teorainneacha atá lenár ról maidir leis seo.

6.2 Tuarascálacha leantacha

Ní chuireann an tAcht teorainn ar bith ar líon na dtuairiscí is féidir le duine ar bith a dhéanamh. Tá meicníocht ag comhlachtaí faighteora faoin Acht chun déileáil le tuairiscí athuair ón tuairisceoir(i) céanna chun a chinntiú nach n-úsáideann na comhlachtaí acmhainní go díréireach. Ní chuireann an mheicníocht seo srian ar bith, áfach, ar dhaoine aonair atá ag iarraidh tuairiscí athuair a dhéanamh as sin a dhéanamh.

Dhéileálar agus leanaimid ag déileáil le cásanna ina seolann tuairisceoir sraith tuarascálacha chuig ár n-oifig, nó chuig comhlachtaí a chuireann ar aghaidh chuig ár nOifig iad ansin, ar cheisteanna atá cosúil leis na saincheisteanna céanna nó saincheisteanna comhchosúla.

6.3 Tuarascálacha gan ainm

I rith 2023 fuairamar deich gcás a bhain leis an earnáil cúram sláinte ó thuaisceoirí gan ainm nó neamhaitheanta. I gcás amháin den sórt sin ní raibh go leor faisnéise sa tuarascáil bhunaidh chun ligean dár nOifig an comhlacht is oiriúnaí a shainaithint chun na líomhaintí a imscrúdú. Toisc go raibh an tuairisceoir gan ainm níorbh fhéidir an t-eolas breise riachtanach a lorg agus ní rabhamar in ann an cás a chur chun cinn.

Ní chuireann sé cosc ar ár nOifig tuarascálacha a chur chuig faighteoirí cuí i gcónaí toisc go mbíonn tuairisc anaithnid. I gcás na naoi dtuarascáil eile gan ainm dá dtagraítear thuas bhíomar in ann an tuarascáil a chur chuig an gcomhlacht cuí. Toisc go bhfuil an tuairisceoir gan ainm d'fhéadfadh go gciallódh sé nach féidir leis an gcomhlacht tuilleadh faisnéise riachtanach a iarraidh ar an tuairisceoir chun a imscrúdú a dhéanamh. D'fhéadfadh go gciallódh sé freisin nach bhfuil siad in ann aiseolas agus obair leantach a sholáthar don tuairisceoir mar a fhoráiltear san Acht um Nochtadh Cosanta.

6.4 Amlínte dúshlánacha

Forálann an tAcht do na hamlínte seo a leanas maidir le tuarascálacha a fháil ón Oifig:

- seacht lá féilire chun admháil go bhfuarthas tuarascálacha;
- 14 lá féilire chun tuarascálacha a tharchur chuig daoine forordaithe, chuig daoine oiriúnacha eile nó chun iad a ghlacadh chun iad a imscrúdú féin (nó tréimhse fhada i gcúinsí eisceachtúla áirithe);
- 14 lá féilire chun cinneadh a dhéanamh ar agóidí i gcoinne tarchur den sórt sin ó na daoine forordaithe sin nó ó dhaoine oiriúnacha eile a gcuirfimid tuarascálacha chucu agus, má ghlactar leo, faighteoir eile a shainaithint.

Cé go bhfuil na hamlínte seo dúshlánach, i rith 2023 d'éirigh linn cloí leis na hamanna slánúcháin chun tuarascálacha a admháil.

Ar an taobh eile bhí na 14 lá chun tuairiscí a tharchur nó a ghlacadh níos deacaire agus chuireamar an cheist chun suntais don Roinn Caiteachais Phoiblí Sheachadadh PFN agus Athchóirithe. Is é an t-amlíne i ndáiríre ná deich lá oibre ar féidir é a laghdú go dtí naoi lá oibre agus fiú ocht lá oibre nuair a thagann laethanta saoire poiblí chun cinn le linn na tréimhse 14 lá. Uaireanta ní féidir an t-amlíne ceithre lá dhéag a bhaint amach mar gheall ar an ngá atá le tuilleadh faisnéise ábhartha nó soiléire a lorg. Is féidir linn síneadh a chur leis an amlíne maidir le tuarascálacha a tharchur nó a ghlacadh nuair a mheasann an Coimisinéir, mar gheall ar nádúr agus castacht na tuarascála, nach bhfuil sé indéanta cinneadh a dhéanamh maidir le tarchur nó glacadh laistigh den amlíne ceithre lá dhéag. I 2023, chuireamar síneadh leis an amlíne maidir le 35 tuarascáil. Astu seo, cuireadh síneadh le 22 agus muid ag fanacht le tuilleadh faisnéise ón duine tuairiscithe. Leathnaíodh ocht gcinn de bharr nádúr agus chastacht na tuarascála, agus leathnaíodh ceithre chás chun go bhféadfaí tuilleadh breithnithe a dhéanamh orthu. I gcás

amháin cuireadh síneadh leis an amlíne fad a bhíothas ag feitheamh le bunú comhlachta poiblí nua ab fhearr a bheadh in ann an tuarascáil a bhreithniú.

Bhí dúshlán ar leith ag baint leis na 14 lá chun cinneadh a dhéanamh ar agóidí i gcoinne tarchurtha agus, má ghlactar leo, chun faighteoir malartach cuí a aithint i bhfianaise easpa cumhachta ar bith an t-am a shíneadh don bhreithniú seo. Mar atá leagtha amach thíos, fuaireamar 29 n-agóid i gcoinne tarchurtha i 2023. I go leor cásanna den sórt sin, bhí na saincheistanna a d'ardaigh an faighteoir ina n-agóid casta agus ilghnéitheach, toisc go bhfuil eolas níos mionsonraithe ag faighteoir na tuarascála ar an tírdhreach earnála agus ar an reachtaíocht ná mar a bhí sé indéanta don Oifig seo a fhorbairt. I gcás ina bhfuil bunús maith le agóid an fhaighteora, i gcásanna áirithe ba thasc casta é an faighteoir cuí don tuarascáil a shainathint. Is é ár dtuairim gur dóichí go n-aithneofaí an faighteoir is oiriúnaí tar éis agóide agus go ndéanfaí cumarsáid níos soiléire leis an duine tuairiscithe dá gcuirfí solúbthacht ar fáil chun síneadh a chur leis an am le haghaidh breithniúcháin i gcásanna casta.

6.5 Cur chuige maidir le tuarascálacha a dhúntar ar mheasúnú tosaigh

Níl aon ról ag an gCoimisinéir maidir le maoirsiú nó monatóireacht a dhéanamh ar dhul chun cinn nó ar thorthaí tuarascálacha a cuireadh ar aghaidh chuig comhlachtaí eile. Mar sin féin, i 10 gcás i 2023 cuireadh in iúl don OCNC nach mbeadh an comhlacht faighteora ag déanamh aon ghníomh eile maidir le tuairisc ar éagóir líomhnaithe toisc gur dúnadh an tuarascáil tar éis an mheasúnaithe tosaigh, mar shampla toisc nach “oibrí é an tuairisceoir” nó nach mbaineann an tuarascáil le “éagóir iomchuí” de réir bhrí an Achta. Aithnímid nach bhfuil aon oibleagáid faoin Acht aon rud eile a dhéanamh nuair a bheidh an próiseas um nochtadh cosanta dúnta, agus i gcásanna áirithe ní bheidh an faighteoir in ann é sin a dhéanamh. Mar sin féin, spreagfaimis lucht faighte na dtuarascálacha – agus go háirithe rialtóirí – féachaint an bhfuil sé indéanta agus cuí mar sin féin dul i mbun líomhaintí na héagóra mar chuid dá ngnáthfheidhmeanna rialála. D’fhéadfadh sé seo a bheith thar a bheith tábhachtach sa chás go n-aithníonn tuarascáil éagóir a d’fhéadfadh a bheith tromchúiseach.

6.6 Comhlachtaí poiblí gan cainéil Nochtadh Cosanta

Forálann an tAcht nach mór do chomhlachtaí cainéal tiomnaithe a bheith acu chun nochtadh a fháil. Ní mór an cainéal sin a bheith scartha ó bhealaí cumarsáide eile sna comhlachtaí sin agus ní bheidh rochtain air ach ag pearsanra atá ainmnithe go cuí. Tá an bealach seo ríthábhachtach chun a chinntiú go bhfeictear agus go ngníomhófar ar aon tuairisc ar éagóir líomhnaithe agus go gcaithfidh sé a bheith i bhfeidhm i gcónaí.

I 2023 fuairamar dhá thuarascáil nach raibh bealach tuairiscithe cuí i bhfeidhm.

Rinne tuairisceoir dhá nochtadh do chomhlacht poiblí nár admháodh agus ní bhfuarthas aon chumarsáid leantach. Ba chosúil nach raibh cainéal tuairiscithe tiomnaithe i bhfeidhm ag an gcomhlacht. D'ardaigh ár nOifig an cheist leis, agus tá an cheist seo réitithe aici anois.

Fuairamar tuairisc maidir le hÚdarás Áitiúil. Líomhain an tuarascáil freisin nach raibh cainéal tiomnaithe um nochtadh cosanta i bhfeidhm ag an gComhairle. Chuaigh muid i dteagmháil go díreach leis ar shaincheist an chainéil um nochtadh cosanta agus trí theagmháil leantach leo chuir sé in iúl don Oifig seo go bhfuil cainéal tiomnaithe aici anois ach nach bhfuil ríomhphost um nochtadh cosanta curtha i bhfeidhm aici go fóill.

7. Agóidí i gcoinne ár gcinntí

Agóidí ó fhaighteoirí

Forálann an tAcht go bhfuil seacht lá ag faighteoir tuairisce chun agóid a dhéanamh. Tar éis agóid a fháil, tá ceithre lá dhéag againn ansin chun cinneadh a dhéanamh ar cheart seasamh lena n-agóid agus, más gá, faighteoir eile a aithint. Is ag an gCoimisinéir atá an cinneadh deiridh faoi agóid a ghlacadh nó a ghlacadh.

Mar a luadh níos luaithe, le bliain anuas fuaireamar amach go raibh an fhoráil chun agóid a dhéanamh úsáideach chun cuidiú leis an Oifig ár ról a chomhlíonadh agus lenár n-eolas a leathnú.

Nuair a bhíonn cinneadh á dhéanamh againn cé chuige ar cheart dúinn tuarascáil a tharchur, déanaimid taighde ar an eintiteas a bhfuil freagracht dhlíthiúil air as déileáil leis na líomhaintí a dhéantar sna tuarascálacha. I 29 cás anuraidh, fuaireamar agóidí in aghaidh tuarascálacha a fháil ó roinnt comhlachtaí, a mhínigh cén fáth nach gclúdaíonn an reachtaíocht faoina n-oibríonn siad na líomhaintí sa tuarascáil. Chuidigh sé seo linn a dhíriú ar an bhfaighteoir ceart. As na 29 n-agóid a fuarthas, ghlacamar le sé cinn

Agóidí ó thuairisceoirí

Agus cinneadh á dhéanamh maidir leis an áit ar cheart dúinn tuarascálacha a tharchur, breithnímid cén comhlacht is fearr chun obair leantach a dhéanamh ar na líomhaintí a rinneadh i dtuarascálacha agus chun aiseolas a sholáthar don thuairisceoir ar an obair leantach sin. I gcásanna áirithe, tarchuireann muid chuig comhlachtaí rialála é, agus i gcásanna eile cuirimid tuairiscí ar aghaidh chuig ball sinsearach den chomhlacht a bhfuil líomhaintí éagóra déanta ina choinne.

Is féidir agóidí ó thuairisceoirí a bheith mar thoradh air seo. Murab ionann agus faighteoirí na tuarascála, áfach, ní sholáthraíonn an tAcht meicníocht agóide do thuairisceoirí. Ina ainneoin sin, tá ár nOifig tiomanta chun a chinntiú go dtugtar míniúcháin do thuairisceoirí maidir le cé chuige a gcuirimid a dtuarascáil ar aghaidh agus cén fáth a gcreidimid gurb é an áit is fearr chun a gcuid líomhaintí a fhiosrú.

I 2023, fuaireamar 11 agóid ó thuairisceoirí a bhí míshásta lenár gcinneadh maidir le tarchur a dtuarascála.

8. Tuarascálacha ina bhfuil níos mó ná líomhain amháin

Bhí níos mó ná líomhain amháin i bhformhór na 283 tuairisc a fuair i 2023. Cé gur thit go raibh an faighteoir céanna ag déileáil leis na líomhaintí go léir i bhformhór na gcásanna, i gcásanna áirithe bhí siad faoi shainchúram roinnt faighteoirí éagsúla. Sna cásanna sin, bhreithnigh muid cibé an raibh nó nach raibh croí-líomhain inaitheanta nó lárnach sna tuarascálacha ábhartha agus, sa chás go raibh, chuireamar na tuarascálacha sin ar aghaidh ina n-iomláine chuig an bhfaighteoir is fearr chun déileáil leis an líomhain sin.

Go ginearálta, is é tuairim an Choimisinéara gur dócha go dtiocfaidh torthaí níos éifeachtaí as measúnú críochnúil amháin ná sraith de mheasúnuithe nó imscrúduithe ar leithligh. Mar sin féin, i gcásanna nach bhféadfaí aon líomhain lárnach den sórt sin a aithint, chuireamar gach ceann de na líomhaintí ar leith ar aghaidh chuig an bhfaighteoir is oiriúnaí agus mar thoradh air sin rinneadh tuarascálacha a roinnt idir faighteoirí éagsúla. Chun aon fhorluí imscrúdaithe a d'fhéadfadh a bheith ag faighteoirí éagsúla na gcásanna scoilte seo a mhaolú, thug an Oifig fógra do gach faighteoir faoin líomhain(i) a bhí á dtarchur chucu féin agus chuig gach faighteoir eile. Chuireamar na tuairisceoirí ábhartha ar an eolas freisin.



9. Cásanna arna nglacadh agus arna measúnú ag an gCoimisinéir um Nochtadh Cosanta

I gcúinsí áirithe nuair nach féidir linn duine forordaithe cuí nó duine oiriúnach eile a aithint atá in ann déileáil le tuairisc, ceanglaítear orainn glacadh leis an tuarascáil sinn féin mar fhaighteoir na rogha deiridh. Le linn 2023 ghlacamar le 14 thuarascáil mar fhaighteoir na rogha deiridh. Bhíomar i dteagmháil le roinnt comhlachtaí poiblí cheana maidir le cúig cinn de na tuarascálacha seo ach thug na comhlachtaí cúiseanna bailí maidir le cén fáth ar thit na tuarascálacha lasmuigh dá sainchúram.

Rinneadh measúnú agus dúnadh ceathair cinn de na 14 chás ar ghlacamar leo tar éis tuilleadh teagmhála leis na tuairisceoirí. Uaireanta níor thug an rannpháirtíocht seo a dhóthain soiléireachta dúinn ar na tuarascálacha chun teacht ar an gconclúid go bhfuil aon fhianaise prima facie ann go bhféadfadh éagóir ábhartha a bheith tarlaithe. Mar shampla, bhain ceann de na cásanna le hiompar iarfhostaí (gairmí i suíomh cúram sláinte) roinnt blianta roimhe sin. Rinneamar measúnú tosaigh agus rinneamar iarracht ainm agus suíomh na seirbhíse a bhí i gceist a fháil amach. Mar sin féin, ní raibh dóthain faisnéise againn agus ní rabhamar in ann a chinneadh go raibh fianaise den scoth ann go bhféadfadh éagóir ábhartha a bheith déanta. Bhí an tuairisc gan ainm agus ní rabhamar in ann, mar sin, aon eolas breise a fháil ón té a bhí ag tuairisciú.

Bhain cás eile le tuairisc a bhain leis an ionramháil líomhnaithe ar thoghchán do phost sinsearach i gcomhlacht spóirt. Rinneamar measúnú ar an tuarascáil agus fuaireamar amach nár chomhlíon an éagóir líomhnaithe an sainmhíniú ar “éagóir ábhartha” faoin Acht agus dhúnamar an cás ar an mbonn sin. Cuireadh cuid den tuarascáil seo ar aghaidh freisin chuig Duine Forordaithe chun measúnú ar leithligh a dhéanamh ar an ngné sin den tuarascáil.

Dúnadh an dá chás eile ar an measúnú tosaigh freisin, toisc nach raibh aon fhianaise prima facie ann go bhféadfadh éagóir ábhartha a bheith tarlaithe i gcomhthéacs oibre.

Fuaireamar tuairisc eile gan ainm ag druidim le deireadh na bliana a raibh dhá ghné léi. Bhíomar in ann cuid den tuarascáil a tharchur chuig an gcomhlacht ábhartha. Bhain cuid den tuarascáil le líomhaintí faoi drochíde sa teaghlach in aghaidh oibrí ar leith. Ghlacamar leis an gcuid seo den tuarascáil agus rinneamar measúnú tosaigh. Fuaireamar amach nach raibh aon fhianaise prima facie ar éagóir in ionad oibre agus dhúnamar an chuid sin den tuarascáil. Chuireamar, áfach, na líomhaintí faoi drochíde sa teaghlach faoi bhráid an Gharda Síochána.

Bhí an Oifig, ag deireadh 2023, fós ag déanamh measúnaithe tosaigh ar na 10 gcás eile ar glacadh leo le haghaidh beart leantach.

10. Rialachas corparáide

Soláthraíonn Oifig an Ombudsman tacaíocht ó Sheirbhísí Corparáideacha d'Oifig an Choimisinéara um Nochtadh Cosanta agus do roinnt Oifigí reachtúla eile. Cé go ndéanann na hOifigí éagsúla feidhmeanna reachtúla soiléire ar leith, feidhmíonn an Oifig mar ghníomhaireacht chónasactha aonair i dtéarmaí eagraíochtúla. Tá an Oifig maoinithe ag Vóta amháin agus á maoirsiú ag Oifigeach Cuntasaíochta (Ard-Stiúrthóir) a fhaigheann tacaíocht ó Choiste Comhairleach Bainistíochta. Agus iad i mbun a gcuid oibre glacann ár bhfoireann leis na hoibleagáidí traidisiúnta príobháideachta agus ioncracais i bhfeidhmiú a ndualgas oifigiúil agus ag an am céanna ag cosaint agus ag caomhnú neamhspleáchas reachtúil agus feidhmeanna gach ceann de na comhoifigí ina n-oibríonn siad.

Tá nuashonruithe maidir lenár Rialachas Corparáideach leagtha amach ar an leathanach [Straitéise agus Rialachais](#) ar láithreán gréasáin Oifig an Ombudsman.

Cuimsíonn an nasc seo nuashonruithe maidir le:

- ár bPlean Straitéiseach 2022-25
- ár gcomhlíontacht leis na ceanglais faoi Acht na Gaeilge
- ár gcomhlíontacht le ceanglais an Achta um Nochtadh Cosanta
- ár gcomhlíontacht leis na ceanglais faoin Acht a.42 IHREC (an dualgas ar sheirbhísigh phoiblí i ndáil le cearta daonna)
- ár gCreat Rialachais Chorparáidigh
- ár bhFoireann Ghlas (lena n-áirtear ár gcomhlíonadh leis an Acht um Ghníomhú ar son na hAeráide agus um Fhorbairt Ísealcharbóin)
- ballraíocht eagraíochtaí.

11. Cás-Staidéir

Cás-Staidéar: Líomhaintí faoi éagóir i seirbhís Cúraim Lae

Cúlra

Rinne fear dhá thuarascáil nochta faoi chosaint don Údarás um Fhaisnéis agus Cáilíocht Sláinte (ÚFCS) maidir le seirbhísí Cúraim Lae. Sheol ÚFCS na tuarascálacha seo chugainn mar nach raibh an sainchúram aige na líomhaintí sna tuarascálacha a fhiosrú.

Rinneamar teagmháil leis an bhfear chun soiléiriú a lorg ar na tuairiscí ach níor cuireadh é seo ar fáil agus chuir an fear stop leis an teagmháil linn ansin.

Baineann na tuarascálacha le seirbhísí míchumais agus eagraíocht tacaíochta agus líomhnaíonn siad na héagóra seo a leanas ag beirt bhall foirne ainmnithe:

- Mí-úsáid institiúideach ag bainisteoir in aghaidh úsáideoirí seirbhíse.
- Bainisteoir nach bhfuil aon cháilíochtaí cúraim shóisialta acu atá riachtanach dá ról.
- Íde béil rialta ar úsáideoirí seirbhíse ag bainisteoir ainmnithe agus ball foirne.
- Aon goid déag airgid agus gluaisteáin nua ón eagraíocht.

Toradh

Ós rud é go mbaineann na líomhaintí maidir le gadaíocht san ionad oibre agus an chaoi a gcaitear le húsáideoirí seirbhíse, chuir an Coimisinéir an tuarascáil chuig Cathaoirleach eagraíocht na seirbhíse míchumais. Bhain na líomhaintí a rinneadh in aghaidh daoine aonair ar leibhéal sóisearach san eagraíocht agus ní raibh aon éagóir líomhnaithe ag pearsanra sinsearach san áireamh. I gcúinsí na tuarascála seo, mheas an Coimisinéir gurbh fhéarr do Chathaoirleach na heagraíochta obair leantach cheart a dhéanamh ar na líomhaintí, lena n-áirítear imscrúdú a dhéanamh dá mba chúig, agus go mbeadh sé in ann céannacht an duine tuairiscithe agus an duine a ndearnadh an líomhain ina choinne.

Cás-Staidéar: Bearna i rialáil na seirbhíse andúile

Cúlra

Rinne bean teagmháil le ÚFCS trí ríomhphost chun a imní a léiriú faoi áis seirbhíse andúile ar a bhfuil ball teaglaigh ag freastal. Dúirt an bhean nach raibh aon uisce te ann, nach raibh aon mheaisíní níos áine ag obair agus gur cuireadh stop le húsáideoirí seirbhíse ó rochtain a fháil ar uisce sna meaisíní díola. Faoi Acht Sláinte 2007, arna leasú, níl sainchúram ag ÚFCS maidir le seirbhísí andúile agus mar sin cuireadh an tuarascáil chugainn.

Toradh

Toisc nach raibh aon 'duine forordaithe' cuí chun an tuarascáil seo a tharchur chuige, agus toisc gur bhain na líomhaintí leis an gcaoi a raibh cóir leighis á cur ar chónaitheoirí in áis a chuir seirbhís andúile ar fáil, sheol an Coimisinéir an tuarascáil chuig POF na seirbhíse andúile mar duine 'oiriúnach eile', toisc go bhfuil maoirseacht ag an bPríomhfheidhmeannach ar an tsaoráid faoi leith.

Léiríonn an cás seo bearna sa rialachán sa mhéid is nach bhfuil sainchúram ag an gcomhlacht a bunaíodh chun maoirseacht a dhéanamh ar cháilíocht an tsoláthair seirbhíse san earnáil sláinte (ÚFCS) maidir leis na seirbhísí áirithe atá ina n-ábhar do na líomhaintí a rinne an tuairisceoir.

Cás-Staidéar: An 'mheicníocht agóide' san Acht um Nochtadh Cosanta

Cúlra

Fuaireamar tuairisc ó fhostaí a d'oibrigh le cuideachta a thairgeann trealamh agus seirbhísí cosanta. Bhain a ról sa chuideachta le cothabháil agus seirbhísí na gcóras tráchtála d'áitribh a úsáideann an pobal, lena n-áirítear naíolann/ionad acmhainní teaglaigh. Líomhain siad nach raibh an oiliúint a fuarthas, agus na modhanna a cuireadh i bhfeidhm, chun an tseirbhís a dhéanamh feiliúnach. Chuireamar an tuarascáil chuig an tÚdarás Slándála Príobháidí (ÚSP) mar Dhuine Forordaithe.

Toradh

Chuir an ÚSP i gcoinne dúinn an tuarascáil a sheoladh chuige toisc nach córais slándála iad na córais shonracha agus mar sin nach dtagann siad faoi shainchúram an ÚSP. Ghlacamar leis an agóid seo agus chinneamar an tuarascáil a chur chuig an gCoimisiún um Iomaíocht agus Cosaint Tomhaltóirí (CICT) mar 'Duine Oiriúnach Eile'.

Is é an fáth atá leis seo ná gur cion é faoi alt 19(1) den Údarás um Chaighdeán Náisiúnta na hÉireann 1996 uirill a dhéanamh atá bréagach in aon phonc ábhartha go bhfuil aon earra, próiseas nó cleachtas de shonraíocht chaighdeánach agus gur féidir leis an CICT an cion seo a ionchúiseamh. Ghlac an CICT leis an tuarascáil.

Cuid de ról an OCNC nuair a fhaighimid tuairisc ar éagóir ná an comhlacht is oiriúnaí a aithint chun na líomhaintí a rinneadh sa tuarascáil a imscrúdú. Uaireanta bíonn deacracht ag baint le nádúr na líomhaintí, agus an chaoi a gcuirtear i láthair iad, chun an comhlacht is oiriúnaí a aithint. Tá sé dosheachanta go mbeidh cásanna ann nach é an comhlacht a gcuirimid tuairisc chucu an comhlacht is fearr chun déileáil leis an tuarascáil.

Faoin 'mheicníocht agóide' san Acht um Nochtadh Cosanta is féidir le faighteoir tuarascála arna tarchur ag ár nOifig agóid a dhéanamh i gcoinne an tarchuir sin. Mhínigh roinnt de na faighteoirí a rinne agóid i gcoinne ár dtuarascálacha a tharchur chucu go ndearna siad agóid mar go bhfuil an sainchúram cuí ag comhlachtaí eile seachas iad féin chun na líomhaintí a imscrúdú i gceart. Ar an mbealach seo tá sé faighte amach againn gur féidir leis an meicníocht agóide a bheith ina cuidiú mór lena chinntiú go dtéann líomhaintí chuig an gcomhlacht is fearr chun iad a imscrúdú.

Cás-Staidéar: Diúltaíonn an Chomhairle Fiaclóireachta glacadh le tuairisc ar éagóir líomhnaithe

Cúlra

Fuaireamar tuairisc ó fhiacloir a bhí fostaithe i gcleachtas próbháideach fiaclóireachta. D'oibrigh siad idir láithreacha cleachtais ar feadh tamaill sular bhog siad go lánaimseartha go ceann acu. Líomhain an fiacloir go bhfuil na cleachtais seo á mbainistiú chun aimhleasa cúram cliniciúil na n-othar. Agus é ag obair ina chleachtas roimhe seo chuir an fiacloir in iúl do bhainisteoir an chleachtais:

- Bhí gnáthaimh fiaclóireachta agus chosmaideacha neamhriachtanacha á ndéanamh mar iarracht an táille in aghaidh na huaire in aghaidh an fhiaclóra a uasmhéadú seachas déileáil le leas na n-othar.
- Níor taifeadh nótaí cliniciúla agus cóireála.
- Ní raibh diagnóisí á ndéanamh agus bhí cóireálacha gan taifead

Ina gcleachtas reatha, rinne an fíaclóir, in éineacht le comhghleacaí a bhí ina fíaclóir freisin, tuairisc ar obair beirt fíaclóirí ionaid ag líomhain go raibh siad:

- Praghas ró-ard a ghearradh as a gcuid oibre.
- Gan nótaí agus stair leighis a ghlacadh go cúf.
- Teip scrúduithe cearta a dhéanamh roimh nósanna imeachta.

Ag glacadh leis an tuairim go raibh croí na líomhaintí faoi chaighdeán an chúraim fíaclóireachta a cuireadh ar fáil d'othair, chuireamar an tuarascáil chuig an gComhairle Fíaclóireachta.

Agóid ón gComhairle Fíaclóireachta

Chuir an Chomhairle Fíaclóireachta in aghaidh tarchur na tuarascála chuici ar an bhforas, ós rud é go raibh na líomhaintí faoin mbealach a bhainistítear cleachtas fíaclóireachta seachas faoi iompar gairmiúil fíaclóirí ainmnithe, go dtagann siad lasmuigh de raon feidhme Acht na bhFíaclóirí 1985 a chiallaíonn nach féidir leis an gComhairle Fíaclóireachta iad a scrúdú.

Toradh

Ghlac an Coimisinéir um Nochtadh Cosanta leis an agóid i leith na ngnéithe sin den tuarascáil a bhaineann le bainistíocht an chleachtais fíaclóireachta. Níor ghlac sé leis an agóid maidir leis na líomhaintí a bhain le hiompar fíaclóirí mar, dar leis, gur mí-iompar gairmiúil na líomhaintí sin, agus dá bhrí sin go dtagann siad faoi shainchúram na Comhairle Fíaclóireachta faoi SI 367/2020. Dá réir sin, níor glacadh leis an agóid maidir leis na gnéithe sin den tuarascáil agus d'fhan na líomhaintí maidir le hiompar fíaclóirí ag an gComhairle Fíaclóireachta le haghaidh obair leantach.

D'fhreagair an Chomhairle Fíaclóireachta nár ghlac siad le seasamh an Choimisinéara agus nach ngníomhóidís de réir na líomhaintí a cuireadh faoina bráid. Mheabhraigh an Coimisinéir don Chomhairle Fíaclóireachta go bhfuil a chinneadh críochnaitheach maidir le glacadh nó gan glacadh le haghóidí i gcoinne tuairiscí a tharchur. Mar sin féin, dhiúltaigh an Chomhairle arís chun glacadh le haon chuid den tuarascáil.

Tá an Coimisinéir um Nochtadh Cosanta fós den tuairim gur cheart go ndéanfadh an Chomhairle Fíaclóireachta measúnú ar an tuarascáil seo. Mar sin féin, a luaithe a eisiúnn an Coimisinéir cinneadh deiridh ar thuarascálacha agóid, tá a ról sa cheist críochnaithe.

Cás-Staidéar: Il-líomhaintí i dtuarascáil amháin

Cúlra

Fuaireamar tuairisc ó iar-oibrí ina raibh líomhaintí maidir le míleithreasú cistí. Bhí líomhaintí ann freisin maidir le bulaíocht agus ciapadh san ionad oibre. Thug an fear aird ar an ngearán do roinnt comhlachtaí sular bunaíodh an OCNC.

Toradh

D'aithníomar roinnt Daoine Forordaithe ach shocraigh muid gur cheart an tuarascáil a dhíriú chuig Duine Forordaithe ar leith amháin a bheadh in ann measúnú tosaigh a dhéanamh agus, dá mbeadh fianaise ann, os a choinne sin, ar éagóir, dul i dteagmháil le comhlachtaí eile mar is cuí.

A luaithe a théann tuarascáil ar aghaidh níos faide ná an measúnú tosaigh, tugann an tAcht um Nochtadh Cosanta scóip leathan d'fhaighteoirí tuarascálacha maidir le cén gníomh breise is cuí chun aghaidh a thabhairt ar an éagóir ábhartha. D'fhéadfadh go n-áireofaí gníomh breise iomchuí éagóir a tharchur chuig comhlacht eile lena imscrúdú. Mar shampla, má dhealraíonn sé go bhfuil coiriúlacht i gceist leis an éagóir ábhartha, d'fhéadfadh go n-áireofaí ar ghníomh breise cuí atreorú chuig an nGarda Síochána lena imscrúdú. Mar an gcéanna, má dhealraíonn sé gur fiú imscrúdú breise nó gníomh eile ó rialtóir eile mar chuid den éagóir ábhartha, d'fhéadfadh go n-áireofaí ar ghníomhaíocht bhreise iomchuí atreorú chuig an rialtóir sin. Mar sin féin, tá freagracht fós ar an gcomhlacht atá freagrach as an measúnú tosaigh a dhéanamh as leanúint d'aiseolas a sholáthar don duine tuairiscithe ar iarratas. Tá dualgas ar an gcomhlacht freisin toradh deiridh aon imscrúdaithe a spreag an tuarascáil a chur in iúl don duine tuairiscithe.

