

Attempt to expand the UK definition of “whistleblower”

The Whistleblowing APPG’s Bill states:

“In this Act, a person is a “whistleblower” if that person has made, makes or is intending to make a protected disclosure or is perceived by a relevant person to have made, be making or intending to make a protected disclosure”

This is an unworkably, unrealistically wide definition of whistleblower.

A reasonable definition of whistleblower takes into account not just employees but other types of workers and related individuals. For example contractors, close relatives of employees, shareholders, non executive directors and service users in some special contexts such as healthcare.

An example of an expanded but still manageable definition of whistleblower is given by the EU whistleblowing directive as follows:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937>

“(38) Protection should, firstly, apply to persons having the status of ‘workers’, within the meaning of Article 45(1) TFEU, as interpreted by the Court, namely persons who, for a certain period of time, perform services for and under the direction of another person, in return for which they receive remuneration. Protection should, thus, also be granted to workers in non-standard employment relationships, including part-time workers and fixedterm contract workers, as well as persons with a contract of employment or employment relationship with a temporary agency, precarious types of relationships where standard forms of protection against unfair treatment are often difficult to apply. The concept of ‘worker’ also includes civil servants, public service employees, as well as any other persons working in the public sector.

(39) Protection should also extend to categories of natural persons, who, whilst not being ‘workers’ within the meaning of Article 45(1) TFEU, can play a key role in exposing breaches of Union law and may find themselves in a position of economic vulnerability in the context of their work-related activities. For instance, as regards product safety, suppliers are much closer to the source of information about possible unfair and illicit manufacturing, import or distribution practices concerning unsafe products; and as regards the implementation of Union funds, consultants providing their services are in a privileged position to draw attention to breaches they witness. Such categories of persons, which include self-employed persons providing services, freelance workers, contractors, subcontractors and suppliers, are typically subject to retaliation, which can take the form, for instance, of early termination or cancellation of a contract for services, a licence or permit, loss of business, loss of income, coercion, intimidation or harassment, blacklisting or business boycotting or damage to their reputation. Shareholders and persons in managerial bodies can also suffer retaliation, for instance in financial terms or in the form of intimidation or harassment, blacklisting or damage to their reputation. Protection should also be granted to persons whose work-based

relationship has ended, and to candidates for employment or persons seeking to provide services to an organisation, who acquire information on breaches during the recruitment process or another pre-contractual negotiation stage, and who could suffer retaliation, for instance in the form of negative employment references, blacklisting or business boycotting.”

A whistleblowing Bill passing through the Irish parliament gives this definition of the additional persons to be protected:

<https://data.oireachtas.ie/ie/oireachtas/bill/2022/17/eng/initiated/b1722d.pdf>

“(III) by the insertion of the following paragraphs after paragraph (d):