



WHISTLEBLOWERS  
AUTHORITY



**INTEGRITY IN PRACTICE**  
**The reporting procedure**



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### **Whistleblowers Authority**

The Whistleblowers Authority (Huis voor Klokkenuiders) is for people who want to report a work-related abuse. In government and in the business sector. We provide advice and if necessary, conduct an investigation. We also support employers in preventing abuses and promoting integrity within their organisation.

### **Reporting regulation in practice**

The Whistleblowers Authority Act (wet Huis voor klokkenluiders) obliges employers of 50 persons or more to adopt a reporting procedure for suspected instances of abuse. This reporting procedure can be very beneficial for you if you incorporate it properly in a broader approach for promoting integrity within your organisation. You thus build an organisation in which employees can report their concerns safely and can deliver good work.

### **Practical guide**

This brochure is a publication of the Whistleblowers Authority. It is a practical guide for drawing up or adapting your reporting procedure. It also gives you tips about embedding the reporting procedure properly in your integrity management. Are you intending to work on the procedure? Read through this brochure, but also take a look at the legislation and a number of [example and model procedures](#). Your sector or umbrella organisation might be able to help you more as well.

### **Who is this brochure for?**

This brochure is intended especially for persons who play a part in their organisation in setting up and implementing a reporting procedure and integrity policy. This applies to public and private organisations. Integrity professionals are involved, such as compliance and ethics officers and integrity coordinators. But this brochure is also useful for HRM and Legal Affairs employees, managers and board members and members of the works council. Employer organisations, sector associations, umbrella and professional organisations will also find it useful. They are an obvious point of contact for their members and can 'translate' new legislation and general frameworks, such as this brochure, into the specific frameworks in which their members operate.

# 1

## Reporting procedure for abuses

The Whistleblowers Authority Act came into force on 1 July 2016. As of that date, every employer for whom 50 persons or more work is obliged to have an internal reporting procedure for abuses. Specific statutory requirements apply to this procedure. This means that employers who already had a reporting procedure will probably have to modify it to comply with the new requirements.



A reporting procedure is also known as a 'whistleblowing procedure'. It is better not to use that term. It sounds negative and does not inspire much confidence. It is preferable to use 'reporting procedure' or a variation thereof.

### 1.1

## Building an ethical organisation

This brochure explains how you draw up a reporting procedure which will fulfil the requirements of the Whistleblowers Authority Act. If you want employees to really report abuses, it is important that you provide a safe reporting climate. No employees will use the reporting procedure if they do not feel safe or if the organisation never pays attention internally to ethical questions and issues. In order to really benefit from the reporting procedure in practice, you must work actively on an ethical organisation. This is also called ethics or integrity management, compliance or corporate conduct. In an ethical organisation there is motivation to prevent abuses. A good reporting procedure is an obvious part of that ethical organisation. If there is no awareness of integrity and your organisation lacks integrity management, your organisation has no tools at all for tackling abuses if employees bring them to the attention via the reporting procedure.

### Broad approach

An ethical organisation cannot be built overnight. Promoting integrity and preventing abuses in the organisation require an effort. A lot of knowledge already exists about business ethics and integrity management. Again and again it shows that building an ethically healthy organisation requires changes in all parts of the organisation:

- company culture and organisational values;
- leadership and management;
- training, communication and awareness;
- recruitment, screening and selection;
- rules, procedures and guidelines;
- control mechanisms and accountability management.

## Advantages

Of course, integrity management costs time and money, but scientific research has shown that it has a clear business case. A healthy ethical climate enhances more than just the effectiveness of your reporting procedure. Integrity management helps you combat economic damage, unfair competition, environmental and health risks, waste of tax money and reputational damage. Doing business ethically gives your organisation competitive advantages in practice. Employees also enjoy the benefits. For employees, an ethical organisation offers improved wellbeing, motivation, work satisfaction and commitment; they are more collegial and have more confidence in the organisation.

### Integral and balanced

**The only way to make integrity management work is to draft policy for it and implement this consistently, and in a balanced and integral way. All the different parts must engage each other in a smart way. Regular monitoring and evaluation of these parts will help your organisation improve itself. Use risk analyses, employee satisfaction surveys and policy evaluations for this purpose.**

## 1.2

### What the reporter can report

Incidents occur in every organisation. If an incident has major or public consequences, it is an abuse. The reporting procedure is intended for the reporting of abuses or suspected abuses. This involves dangerous, immoral or illegal practices which take place under the responsibility of the employer. The public interest is at issue in these cases. The reporting procedure is therefore not intended for individual disputes such as a conflict between an employee and their immediate manager.

### Reporting abuses

The Whistleblowers Authority Act makes it mandatory to have a reporting procedure. The procedure sets out how employees can report their suspicions properly and what happens with that report. The reporting procedure specifies:

- what employees can report and when;
- to whom employees report an abuse and how;
- what the rights of a reporter are;
- what the organisation will do with a report.



**Reports improve your organisation! Remember that colleagues often have to cross a significant threshold before they will (dare to) make a report. You should therefore treat reporters well and prevent them from being disadvantaged because of their report. This will do your organisation good.**

## Safety and integrity

A clear and understandable reporting procedure, implemented properly, will ensure that employees can raise abuses early, confidentially and safely, across a lower threshold. In the first instance perhaps you are not eager to hear reports of abuses. Nobody likes to hear what goes wrong and of course, it takes time to investigate reports. But if abuses are revealed earlier and you can solve them internally, ultimately this will mainly be beneficial for your organisation. Abuses are prevented from escalating and causing further damage. A reporting procedure thus increases the 'self-cleaning' capacity of your organisation. You can see a report as free advice which it is best to appreciate.

## Loyal employees

If employees dare to broach abuses, this also means that you have loyal employees who feel safe in their workplace. A report is usually based on a sincere concern of a well-meaning colleague who wants the best for your organisation. If employees did not feel safe, they would never dare make a report. In that sense, every report is a compliment for your organisation!

### No reporting procedure? Considerable risk!

You run a considerable risk if there is no reporting procedure or if the procedure is inadequate. There is a much greater chance that an employee will not report their suspicion of an abuse internally first, but will expose the matter externally straight away. Moreover, the court can rap you on the knuckles if there is an abuse and call you to account for not being a good employer. Or the court might decide for the employee in a conflict concerning disadvantage, because it considers the absence of a reporting procedure as a lack of clarity on the part of the employer. This can mean that your organisation has to pay compensation to reporters of abuse. The lack of a reporting procedure or an inadequate reporting procedure can thus cause you financial damage and is bad for the reputation of your organisation.

## 1.3

### When is a reporting procedure mandatory?

An employer who employs 50 persons or more is obliged under the Whistleblowers Authority Act to have an internal reporting procedure. These 50 employed persons are not only employees with an employment contract. According to the definition in the Whistleblowers Authority Act, the group is larger and includes everyone who works for the 'employer'. In practical terms this means that you include the following persons:

- employees, also those with zero hours contracts;
- temporary workers (hired workers) who have been working for your organisation for more than 24 months;
- persons who have been supplied or seconded by the employer to other organisations;
- persons who are included according to an agreement between the employer and the works council (for example, temporary workers who have been working for less than 24 months or volunteers).

### Works council

If you count 50 employees or more when you include all persons from this list in your organisation, a reporting procedure is therefore mandatory. A works council is also mandatory in that case. This is no coincidence. The works council plays an important part in the [adoption of the reporting procedure](#).

#### **Fewer than 50 employees? You can still have a procedure!**

Do you have fewer than 50 employees? Of course you may still introduce a reporting procedure. Smaller organisations also benefit if everyone has the opportunity to express their concerns about the state of affairs in the organisation in a safe way. If necessary, you can organise this together with other companies from your sector. That allows you to share the investments in (external) confidential counsellors and investigative capacity. You may also be able to turn to your sector organisation for model procedures.

### Mandatory under various codes

It is not only the Whistleblowers Authority Act that obliges employers to have a reporting procedure. Various sectoral agreements and sector codes also oblige employers to have a similar procedure. This applies, for example, to companies listed on the stock exchange (Corporate Governance Code), the cultural sector (Culture Governance Code), healthcare (Healthcare Governance Code) and education (various sector codes). In principle these procedures are the same as a reporting procedure, even though they often have a different name, such as a Procedure for reporting abuses or a whistleblower procedure. Make sure that you can fulfil the obligations from your sector as well as the Whistleblowers Authority Act with a single procedure and a single point of contact.

## 2

## The contents of the reporting procedure

In the reporting procedure you indicate how your organisation deals with reports of abuse. You may decide yourself how you give content to this, as long as you fulfil the statutory requirements for this procedure. The most important thing is that the procedure makes it clear what reporters can expect if they make a report, what kind of protection they are given, how they should make the report, whether they will receive feedback, what deadlines apply, what the process looks like and who is responsible for the handling of the report. The reporters thus know what they can rely on and your organisation is prepared for reports.

### Mandatory elements of the reporting procedure

You must deal with the following elements in your reporting procedure:

- what can be reported;
- who can use the reporting procedure;
- that a reporter is entitled to protection against disadvantage, at least if they make the report in the correct way;
- the points of contact to which a report can be made and in which order;
- when a reporter can make their report externally;
- that you treat the report as confidential;
- that an employee who wants to make a report in confidence can consult an advisor.

These requirements are explained in more detail in this section of the brochure.

### Other obligations

- You are obliged to provide the reporting procedure to your current colleagues.
- You require consent from the works council to introduce the reporting procedure.
- Consent from the works council is also necessary for every change to the reporting procedure.
- The works council is entitled every year to written information about the operation of the reporting procedure in the past year.
- This annual obligation to provide information also applies to the expectations that you have of the reporting procedure for the coming year.

These requirements are dealt with in more detail in section 3 of this brochure.



## 2.1

### What is an abuse?

The procedure specifies the situations in which an abuse is concerned according to the Whistleblowers Authority Act. It must also state what a suspicion of an abuse is precisely. You may copy the statutory definition literally for this. You can also choose your own words.

#### Public interest

The reporting procedure is intended essentially for an abuse whereby the public interest is at issue. The law does not specify precisely when that is the case. So it is up to you to examine this carefully. In principle this concerns situations that go beyond the level of one instance or a few personal cases, for example due to the seriousness of the situation, its size or structural character.

#### Broader procedure

Strictly speaking, your reporting procedure only has to ensure that employees are able to report (suspicions of) abuse. Nevertheless, it is advisable to make the procedure broader and include agreements about the reporting of integrity incidents, irregularities and imminent abuses. After all, every employer is well advised to do their best to address these kinds of incidents. In doing so you flag down problems as fast as possible and are able to prevent worse. Moreover, it is often difficult for a person to see whether their suspicion involves a breach of integrity, an irregularity or a social abuse. In this way you will also be able to fulfil in one go the obligations under the Whistleblowers Authority Act and specific sector codes that may apply to you.



This can lead to concurrence with other procedures in your organisation, such as complaints procedures. Make sure that it is clear where employees can turn to for each kind of report.

#### Including several kinds of incidents

The more issues and problems employees can report, the more favourable this ultimately will be for your organisation. Are you indeed considering extending the kinds of incidents and situations which employees can report using the reporting procedure? In that case, also include suitable definitions of the following situations in your reporting procedure:

- **Imminent abuses**

If employees can already make an internal report in the case of an imminent abuse, it is easier to prevent the abuse itself. Therefore, include in the procedure the possibility for employees to also report the suspicion of an imminent abuse.

- **Violations of integrity**

Violations of integrity are incidents in which persons violate the standards and values of your organisation and thus do not comply with the code of conduct in which these standards and values are laid down. The difference with abuses is that with violations of integrity the public interest is not (yet) at issue, while with abuses this is always the case.

- **Irregularities**

Irregularities concern errors in implementation, structures, processes or procedu-

res within the organisation which are so serious that they exceed the responsibility of the immediate manager.

In your procedure, make the distinction clear between integrity incidents, irregularities and imminent abuses on the one side and the abuses pursuant to the Whistleblowers Authority Act on the other.

### **From violation of integrity to abuse**

Employees at an abattoir who misappropriate funds or pass sensitive company information on to the rival do commit violations of integrity, but there is not immediately a question of social wrongdoing. But what if it becomes structural, management is involved and it concerns large amounts of money? Or worse still, if employees – due to an increasingly poisoned culture and deficient supervision – start messing around with the meat, creating a danger to public health? In that case, the public interest is at issue. And then it is an instance of abuse.



Will you have a single broader reporting procedure to be in line with different codes and obligations? Make sure that the definitions you use are consistent with those various codes and obligations. For example, always state which part of the reporting procedure a specific code or law applies to.

## **2.2**

### **Definition of reporters: who can report something?**

The reporting procedure is intended to be widely accessible. Anyone who encounters an abuse through their work in your organisation has the possibility of reporting it via the reporting procedure. The procedure is therefore open not only to the people who currently work for you, but also to former colleagues and all persons who have (had) something to do with your organisation through their work. The following persons may make use of your reporting procedure:

- persons who work for you now or have worked for you in the past, whether or not with an employment contract or appointment. This includes your current employees and former employees, but also self-employed workers, volunteers, flexible workers and trainees;
- employees from other organisations who work for your organisation, for example as contractor, subcontractor, partner or temporary worker.

This brochure and the Whistleblowers Authority Act call all these people who can make a report ‘employees’. In your procedure, state explicitly who may (and if that is useful, who may not) make use of it. This prevents confusion. Legally you do not have to open your procedure to people who as citizens, customers, students, parents or clients want to report an abuse to you. Of course, it is possible to do so anyway. It could allow you to pick up worrying signals fast.



The group of people who can make reports ('employees') is therefore not the same as the group of 'persons working for the employer' which determines whether a reporting procedure (and works council) is obligatory for your organisation. Many more people than only your current colleagues may thus make a report.

## 2.3

### Legal protection and ban on disadvantage

An important part of the Whistleblowers Authority Act is the ban on disadvantage. An employee who makes a report of an abuse in the correct manner may not be disadvantaged for that reason. Include this legal protection of the employee explicitly in your procedure. This will stimulate your employees to make reports: they do not have to be afraid of unpleasant consequences.



The legal ban on disadvantage applies only to reports of abuses. But it would be good if your reporting procedure also includes protection of employees who report incidents, irregularities and violations of integrity. This increases confidence in the reporting procedure and lowers the threshold for reporting.

#### What is disadvantage?

Do you really want employees to report suspicions of abuse? In that case, it is important to protect them adequately against disadvantage. Disadvantage is involved if the employer treats the employee worse because of making a report than if the employee had not made this report. Examples of disadvantage are dismissal, involuntary transfer or refusal of promotion. It is not enough if only the employer himself does not disadvantage the employee. It is also his task to ensure that managers and colleagues do not disadvantage the reporter, for example through bullying, ignoring or intimidation. This protection against disadvantage is not limited to a particular period.

#### Protection of parties concerned

Not only the reporter deserves protection. You are well advised to offer protection to any witnesses of the abuse and other parties involved. This prevents people from not daring to make a report, for example because they are afraid that their colleagues will be adversely affected by it. Take note: the accused party is entitled to protection as well! After all, he or she is innocent until the opposite is proven. Therefore include the protection of all parties in your reporting procedure.



If the reporter has reported the abuse in confidence (via the confidential counsellor) or anonymously, it can be difficult for you to prevent disadvantage. That is why it is important for you to pick up signs immediately of bad treatment of the reporter. Then you can intervene directly. In the case of a confidential report, it is up to the confidential counsellor to inform you swiftly of signs of disadvantage. This is more difficult for anonymous reports. The reporter will in that case really have to make himself or herself known to you.

### Investigation of treatment

Does the reporter believe that he or she is being disadvantaged nevertheless? In that case, he or she can request the Investigation department of the Whistleblowers Authority to initiate an investigation into the way he or she is being treated. This request can also be made while the internal investigation of the abuse is still running. It is sensible for the reporter to indicate internally that he or she feels disadvantaged. If the Whistleblowers Authority concludes that this person is indeed disadvantaged, the reporter can demand compensation measures from the employer.

## 2.4

### Correct reporting

Employees can only claim legal protection for disadvantage if they report an abuse in the correct manner. Therefore, in your procedure indicate:

- where employees can report suspicions of abuses internally;
- when they can or even should make a report externally.

If a person makes a false or deceitful report, he or she cannot claim protection against disadvantage.

### Careful procedure

It is important for a correct report that the employee adheres to the reporting procedure. Two elements play a part in this:

- 1 Firstly, the reporter must use the correct reporting order. In legal terms, the reporter must 'act prudently in terms of procedure'. The intention is for every organisation to have the opportunity to solve abuses themselves first. The starting point is therefore that the employee must first make a report internally. Only after that is an external report permitted. This is the correct order of reporting. Only if the employee cannot be demanded to first make an internal report, may he or she make the report externally straight away.
- 2 Secondly, the reporter must also 'act prudently in terms of substance', as this is called in legal terms. The suspicion of an abuse must be a reasonable suspicion. Reporters cannot accuse the organisation of abuses without reason. They must be able to substantiate this through matters that they have observed themselves or through documents (such as emails, reports, letters, photos).

### Setting up a reporting centre

The officer to whom the employees can make their report of an abuse depends on the structure of your organisation. There are many possibilities. But make sure that the

reporting centre has easy access, so that possible reporters know how to find it and moreover, trust it. In this way you increase the willingness to make reports.

### Three types of reporting centres

Pursuant to the Whistleblowers Authority Act, a reporter must always be able to make a report at one of the three possibilities below. The reporter may choose himself or herself. You must allow all three possibilities:

- **manager or higher superior**

Employees can report a suspicion of an abuse to their immediate manager. Perhaps this is too close or the manager himself or herself is part of the abuse or violation? A reporter may also always make a report to another manager or the highest superior.

- **specific reporting centre**

You can set up a specific reporting centre in your organisation where employees can report an abuse. Make sure that the person responsible for the reporting centre does not have a 'double function'. This is the case, for example, if he is also a member of the works council or is the company doctor.

- **confidential counsellor**

Employees can also make a report to the confidential counsellor. But take note! The confidential counsellor takes care of the interests of the employee, not of the employer. He does not decide whether an investigation into the report will be made, nor does he ever perform the investigation himself. The confidential counsellor can protect the identity of the reporter if the reporter wants that. The confidential counsellor then acts as a kind of intermediary for the report and ensures that the name of the reporter is not made known (unnecessarily) within the organisation.

### Handling of the report

Whoever the reporter turns to, make sure that the report ends up as soon as possible with the person who assesses whether the report will be investigated. Often this is the highest superior or the director of compliance or legal affairs. This highest superior or officer is best supported in this task by a specific expert: a legal or HRM officer or an expert in compliance/integrity. Larger organisations often have a separate department or committee for this purpose. If management is involved in the reported abuse, it is of course not possible for employees to report it directly to them. For these cases, you can give a role in the reporting procedure to the internal supervisory authority, such as the supervisory board.

### Reporting externally

There are situations in which an employee can or even must report a suspicion of an abuse externally. State these situations explicitly in your procedure. An external report is necessary if:

- the employee cannot 'reasonably' (as this is called officially) be expected to make an internal report. If a reporter has a valid reason for not reporting internally first – for example because his or her colleagues are in acute danger – he or she may report externally straight away. Another situation in which the employee cannot be demanded to make an internal report is if he or she can reasonably suspect that the highest responsible person in the organisation is involved in the abuse;

- the report is not taken up or handled properly internally. The reporter must have followed the correct procedure for the internal report first;
- there is an external reporting obligation. In that case, the employee does not have to wait for the internal report first. In some cases, the employer is responsible for making the external report. The employee must then report his or her suspicion within the organisation, so that the employer can fulfil this reporting obligation.

### External reporting centres

For certain sectors and incidents there are permanent external reporting centres, such as inspection services or supervisory authorities. Examples are the Labour Inspectorate (Inspectie SZW), the Fiscal Intelligence and Investigation Service (FIOD) and the National Police Internal Investigations Department (Rijksrecherche). You can name these reporting centres in your reporting procedure. In some sectors it is obligatory to report certain incidents immediately. For example, financial institutions must report incidents to De Nederlandsche Bank (DNB) and the Netherlands Authority for the Financial Markets (AFM), similar to how care institutions must report to the Healthcare Inspectorate. Of course, the Whistleblowers Authority Act allows these external reports. Are there one or more external reporting centres that are obvious for your organisation? If so, it is sensible for your procedure to include which external reporting centre employees can use.

#### Reporting to the Whistleblowers Authority

If there is no suitable external reporting centre, employees can make an external report to the Investigation department of the Whistleblowers Authority. This department can investigate the report if:

- it contains the following information:
  - the name and address of the reporter;
  - the date;
  - a description of the suspected abuse and the name of the employer concerned;
  - the reason or reasons why the employee thinks there is a case of an abuse;
- the employee has a 'reasonable suspicion' of an abuse. This means that he or she does not have to prove the details, but must be able to show that something is wrong;
- a public abuse is concerned;
- there is no other body (such as the Department of Public Prosecutions, an inspection service or supervisory authority) which can investigate the abuse, or if this body does not investigate the abuse or not properly; an internal report has been made first, but it was not tackled appropriately, or the reporter had a well-founded reason for not making the report internally;
- the Whistleblowers Authority is not already investigating the abuse;
- the court has not already made a final judgment about the abuse.

Perhaps employees think they can also report smaller integrity incidents to the Whistleblowers Authority. This is not the case. The Authority only investigates work-related abuses. In order to eliminate this misunderstanding, it is useful to state it explicitly in your procedure.

## Form of the report

The law does not prescribe what an internal report looks like precisely. There is no prescribed form for making a report. Verbal or in writing: both are possible. Nevertheless, it is sensible to pay some attention in your reporting procedure to the form of the report. That makes the approach the same for each report. Make sure in any case that:

- the report is laid down in writing; for a verbal report, the person receiving the report puts it down on paper;
- the reporter receives a copy of the written report and can add to it or adjust it if he or she feels that this is necessary. If the reporter agrees with it, he or she signs the report;
- the report is dated (this is also important to demonstrate any disadvantage later);
- the report is transferred as soon as possible (legal experts say 'promptly') to the person who will assess the report. Indicate as specifically as possible when this is: the same day, the next day, an actual date.

## Confidentiality

The Whistleblowers Authority Act prescribes that the employer handles the report and the identity of the reporter, if the reporter so requests, confidentially. This means that you set up the reporting process so that you can actually provide that confidentiality. Your procedure must also state that your organisation guarantees this confidentiality. Sometimes it can be easy to deduce who the reporter is. Therefore, always handle a report confidentially, even if the reporter does not ask for that explicitly. This means that the name of the reporter is protected during the investigation into the suspected abuse, and definitely also in the final report. If employees know that their report remains confidential and they thus run less of a risk of disadvantage, they will be more prepared to report abuses. Another advantage is that you can investigate the report in all confidentiality. This also raises the willingness to report in your organisation.



**The more people who know the identity of the reporter, the greater the chance that the issue can no longer be handled in confidentiality. Ensure that the reporting process has been set up so that the number of people involved with the report is no larger than necessary.**

## Anonymous reporting

Confidentiality is different to anonymity. With anonymity, nobody knows who the reporter is. With confidentiality, a few people do know this (sometimes only the confidential counsellor, and usually the person responsible for the reporting centre and the investigators). But they do not reveal the identity of the reporter. Many reporters feel a need to report anonymously. This can indeed lower the threshold for reporting, especially if there is a case of fear in the workplace. You can offer employees the possibility of reporting a suspicion of abuse anonymously, for example via a special telephone number or web page.

## Disadvantages

However, there are significant disadvantages to anonymous reports:

- The chance of misuse and false reports increases greatly. Colleagues can be accused wrongly of something.
- The investigation into the abuse cannot take place on the basis of hearing both sides. Nor can the employer put questions to the anonymous reporter.
- The reporter does not receive any feedback about the report.
- It is difficult to protect an anonymous reporter against disadvantage.

You can deal with some disadvantages using special technical procedures that make it possible to communicate anonymously with the reporter. This lowers the risk of a false report and improves the quality of the investigation.



If a reporter wants to claim legal protection, he or she will have to make his or her identity known to the employer. For the so-called investigation of treatment by the Whistleblowers Authority, a reporter cannot remain anonymous either.

## 2.5

### Right to advice

Making a good report is quite complicated and often demands a lot of the reporter. And unfortunately, making a report is not without risk. It is therefore important for a reporter to know what he or she is letting himself or herself in for. The Whistleblowers Authority Act gives the employee the right to obtain advice confidentially about the best thing for him or her to do. State this right in your own procedure. It is sensible to ensure that your organisation has such an advisor – often this is the **confidential counsellor** – and to inform the employees about this.

#### Other advisors

If there is no confidential counsellor, an advisor from the Advice department of the Whistleblowers Authority, a lawyer, a legal expert from a union, a legal expert from a legal expenses insurance company or a company doctor can take on the advisory role. You can put forward suggestions for this in your procedure. Should a reporter decide to engage a paid advisor themselves, you do not have to refund those costs. Of course, it is possible.

## 2.6

### Informing the reporter

People reporting abuses have often gone through a whole process already. They hesitated for a long time and weighed up everything before they actually dared to report a suspicion of an abuse. All the more so because they are certainly taking a risk in doing this. Transparency in the reporting process is therefore the very least that an employer can offer the employee. You are obliged under the Whistleblowers Authority Act to lay down in your own reporting procedure 'the way the internal report is dealt with'. In your procedure, describe which information the reporter can expect as a result of his or her report.



## Procedure

It is advisable to indicate in the reporting procedure as well as in your [investigation protocol](#) that the reporter can expect the following messages:

- **Confirmation of receipt after report**

After the report has been received, the reporter must receive a confirmation of receipt as soon as possible. It is sensible to include a copy of the report or a brief description of the report as well. This makes things clear and ensures that all parties involved have the same information.

- **Decision about the report**

It is not obligatory to investigate every report. That is not always possible, desirable or necessary. Should you decide not to investigate a report and therefore to do nothing with it, inform the reporter of this decision and give the reasons.

- **Follow-up steps (in the event of investigation)**

If you do intend to investigate the report, it is advisable to inform the reporter about the follow-up steps. Do you need more information, and would you therefore like a meeting with the reporter? Maintain good contact with the reporter during the investigation. This often relieves a lot of stress in a tense period. Moreover, you can keep an eye on whether disadvantage occurs.

- **Conclusion of the investigation**

Inform the reporter as soon as the investigation has been completed. Report the most important conclusions. In doing so the employee knows that his or her report has been taken seriously. He or she can then also decide whether it is necessary to report the issue externally. If you keep the reporter well informed, he or she will be more inclined to find that the issue has been resolved satisfactorily. An external report is no longer necessary in that case.



It is advisable to give the reporter the opportunity to react to the investigation result and the position of the employer before you conclude the investigation. This way you can also avoid employees making an external report as yet due to dissatisfaction with the internal investigation.

## Periods

It is not mandatory to state specific maximum periods with the procedure. However, it is decent to inform the reporter when he or she can expect something. It is preferable, not only for the reporter, but also for your organisation, if an investigation does not drag on for months. Do choose periods that allow you to work expeditiously as well as carefully. Also inform the reporter if you do not meet a period.

## 3

## Adopting and implementing the procedure

Your reporting procedure must fulfil the statutory obligations. But that does not automatically make it a good procedure as well. The procedure really only works properly if it is embedded in the organisation and all employees are aware of its existence.

### 3.1

#### Role of the works council

You collaborate with the works council in introducing your reporting procedure. The council has right of consent if you want to adopt the reporting procedure and if you want to change it. This means that the works council must first approve the reporting procedure before you can introduce it. The works council can also point out to the employer the obligation to draw up a reporting procedure.

##### Committed works council

It seems obvious to involve the works council from an early stage in the drafting of the procedure. The works council is familiar with the culture in the workplace and has an important responsibility and duty of care when the integrity of the organisation is involved. If the works council has collaborated on the reporting procedure, there is a greater chance that the council will consent to it. Moreover, the procedure will have broader support and be better known in your organisation.

##### Approval for every change

Approval from the works council is also required for every change to the reporting procedure. It is therefore handy not to mention persons who are involved in the procedure by name, such as the confidential counsellor, in your reporting procedure. Otherwise you will have to obtain approval from the works council every time there is a (personnel) change. Place general contact details of a reporting centre or confidential counsellor on a web page or on the intranet, for example.

##### Monitoring the reporting procedure

Every year the employer is obliged to provide the works council with information about the social policy it implements and the consequences of this policy for different business units and job categories. The works council must also receive information about the operation and consequences of the reporting procedure. The employer must provide this information on its own initiative; the works council does not have to request this first. In addition, the employer must inform the works council every year, verbally or in writing, which social policy it wants to implement in the coming year. This also means that the employer informs the works council about its expectations for the reporting procedure and the developments it anticipates for it.

### 3.2

## Accessible for employees

A reporting procedure is intended primarily to provide the reporter with information and offer confidence. The reporter must know what happens if he or she makes a report. A good reporting procedure is therefore:

- accessible to everyone and simple to find, preferably via intranet;
- easy to read and understand for all employees.

Pursuant to the Whistleblowers Authority Act, the employer is obliged to provide the persons working for him with a written or electronic copy of the reporting procedure. You fulfil the law if you place the procedure on intranet, for example, and inform your colleagues of it via email. The reporting procedure is also open to former employees, employees who are not employed by your organisation, and hired workers. They usually have no access (any more) to your intranet. Make the procedure accessible for these groups by placing it on your company website.

### Preferably not online?

There is not really any reason not to put your reporting procedure online. Nevertheless, if you would prefer not to, offer reporters the possibility of requesting the reporting procedure confidentially. For example, you can have external reporters request the reporting procedure from the confidential counsellor, and you provide the contact details of the confidential counsellor for this purpose. Emphasise that all details of the reporter remain confidential.

### 3.3

## Understandable for employees

It is important that you communicate well about the reporting procedure. Let employees know what the reporting procedure is for and where they can find it. But employees should not only know where to find the procedure: they also have to be able to understand it. How do you tackle this? Think about who the employees are who will read the reporting procedure: this is your target group. Make the form, tone and length of the procedure match the culture of your organisation. Understandability is often more important to employees than a legally solid text. If certain concepts are legally complicated, it can be handy to work with examples. The works council can read the text critically on this point. Check whether you can make the procedure clearer using a flow diagram, summary or an infographic or brief animation, for example.



Also include the reporting procedure in any training courses you organise. This way you can inform your colleagues in an easily accessible way.

### 3.4

## Embedding in the organisation

Just drawing up a reporting procedure will not work. If it gets no further than being a measure on paper, this will often precisely increase distrust and insecurity in the organisation. The procedure will seem to be just a paper tiger. More than anything the procedure must work properly in practice. This will only work if the procedure is embedded in the organisation and your organisation has a good reporting infrastruc-

ture. That means that everyone takes their role seriously and that employees can first obtain advice before they make their report, for example from the confidential counsellor. If you want to benefit from the reporting procedure as an organisation, it is of crucial importance that you build an **ethical organisation**. Only then can you increase the safety and integrity in your organisation.

### **Professional roles**

Clear integrity rules and procedures that offer the employees an ethical framework for their actions must exist in the organisation. A reporting procedure is part of these procedures. Research has shown that proper reporting is only successful if all colleagues involved do their work properly. Various colleagues each have their own role in a procedure that really works. This requires professionalism from the various colleagues who are involved in the reporting system. Therefore, make sure that everyone has been properly trained and is properly prepared:

- board of directors and top management, who are open to critical reports and take these signs seriously;
- confidential counsellors and confidential advisors, who are accessible, listen well and really help employees;
- reporting centre, compliance and internal investigators, who tackle a report expeditiously and investigate it objectively and professionally;
- HRM and legal affairs, which ensure that the standards and values of the organisation are known and that employees know where to find the reporting procedure;
- audit, works council and Supervisory Board, which contribute to the supervision of and accountability for the reporting structure.

### **Professional advisor**

Reporting an abuse is not nothing. Employees often hesitate about whether to make a report or not. A justified report can have significant consequences, but so can an unjustified report. That is why it is good if employees can obtain advice before they make a report. Ensure that your organisation has a professional advisor reporters can turn to. The advisor has a duty of confidentiality, so that the reporter can discuss their issue in confidence. If possible, provide an internal advisor. This way, an employee can obtain advice from someone who knows the organisation.

### **Confidential counsellor**

An excellent person for fulfilling the role of advisor is the confidential counsellor. That is why it is sensible to appoint an internal or external confidential counsellor. The success of a reporting system hinges on a professional confidential position, even though pursuant to the Whistleblowers Authority Act it is not mandatory to have a confidential counsellor. It is important that it is easy for employees to approach a confidential counsellor. The confidential counsellor must be able to listen, be very familiar with all rules and procedures, and know what he or she can and cannot do. A good confidential counsellor is sure of himself or herself and has been properly trained for this task. Employees will have less confidence in the confidential counsellor if he or she has multiple functions. That is why the following officials are not suitable as confidential counsellors: the highest manager, HRM staff, the company doctor, works council members, the compliance officer, the integrity coordinator and employees who are involved in other ways in reports.



The task of the confidential counsellor is to support the employee, even if this is at the expense of the employer. This puts the confidential counsellor in a vulnerable position. However, the counsellor cannot fulfil his or her task if he or she feels inhibited in supporting the employee. Protect the confidential counsellor therefore against disadvantage, for example by setting this out explicitly in his or her appointment.

#### Advice from the Whistleblowers Authority

Besides an internal advisor, reporters can always consult the Advice department of the Whistleblowers Authority. The department provides free, independent and confidential advice to employees who have a suspicion of an abuse and are in doubt about whether to report it. Include this possibility in your (communication about the) reporting procedure. Among other things, the Advice department can:

- assess whether a work-related abuse is involved and refer the person requesting advice to the body where he or she can make the report;
- provide advice and support in making an internal report;
- provide advice about dealing with the consequences of an internal report;
- inform the reporters of their rights and obligations;
- offer psychosocial support for the unpleasant consequences and stress that the report can entail.

The Advice department does not give legal support.



With reports, you gather information to which the Dutch Personal Data Protection Act (*Wet bescherming persoonsgegevens*) applies. You must inform the Dutch Data Protection Authority (*Autoriteit Persoonsgegevens*) that you are processing personal data and handle the data you are collecting in a careful manner.

#### Investigation protocol

As soon as an incident has been reported, you immediately set to work with the report. If you handle the report properly, this is favourable for trust in the reporting procedure as well as for safety in the workplace. It is up to you to decide whether you will initiate an investigation, then perform that investigation or have it performed, and take a position on the report. Do you want to investigate a report carefully? A good investigation protocol is actually essential in that case. In this protocol you set out various matters that you will deal with in an investigation. Examples are powers, responsibilities, investigation methods, the communication during and after the investigation and the rights and obligations of everyone involved in the investigation. It can be useful to include (parts of) the investigation protocol in your reporting procedure. This is not required by law.



Make sure that the investigation is independent. Have it performed by an objective party. In any case, do not have it performed by persons who may be involved or have been involved in the suspected abuse or irregularity. Also not by the confidential counsellor or by people who will be involved in the labour law measures as a consequence of the investigation.

### Measures

If the suspicion of an abuse turns out to be correct, it is of the greatest importance that you take fair measures to remedy the abuse. Communicate these measures as feedback to the reporter. Also ensure aftercare for the colleagues involved. And most of all: learn from the report! Make sure that this kind of incident will no longer occur in the future.

### Colophon

This brochure was written by the Whistleblowers Authority, with cooperation from the Dutch Water Authorities. The aim of the brochure is to answer frequently asked questions of employers that concern the reporting of suspicions of an abuse. We would like to keep the brochure up-to-date by processing your reactions and experiences in it. For more information please to go [www.huisvoorklokkenluiders.nl](http://www.huisvoorklokkenluiders.nl).

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