

Protected Disclosures Policy



An Roinn Leanaí, Comhionannais,
Míchumais, Lánpháirtíochta agus Óige
Department of Children, Equality,
Disability, Integration and Youth

June 2021

**THIS POLICY IS NOT A LEGAL
INTERPRETATION OF THE ACT.**

THIS IS VERSION 2 OF THE POLICY APPROVED BY THE THEN DCYA MANAGEMENT BOARD IN NOVEMBER 2019. THE CHANGES TO THE DOCUMENT REFLECT CHANGES IN PERSONNEL AND THE DEPARTMENT'S TITLE.

TABLE OF CONTENTS

DISCLOSURE POLICY STATEMENT FOR THE DEPARTMENT OF CHILDREN, EQUALITY, DISABILITY, INTEGRATION AND YOUTH.....	5
INTRODUCTION	6
KEY PRINCIPLES AND COMMITMENT OF THE MANAGEMENT BOARD	7
WHAT IS A PROTECTED DISCLOSURE?	7
WHO CAN MAKE A DISCLOSURE UNDER THIS POLICY?	7
DEPARTMENT STAFF	7
STAFF IN AEGIS BODIES OF THE DEPARTMENT FOR CHILDREN, EQUALITY, DISABILITY, INTEGRATION AND YOUTH	8
VOLUNTEERS	8
WHAT TYPES OF DISCLOSURES CAN BE RAISED UNDER THIS POLICY?	9
WHAT TYPE OF DISCLOSURES SHOULD GENERALLY NOT BE RAISED UNDER THIS POLICY?	9
REASONABLE BELIEF.....	10
SOME PRACTICAL POINTS WHEN MAKING A DISCLOSURE	10
DISCLOSURE OF INFORMATION.....	10
ANONYMOUS DISCLOSURES.....	11
DISCLOSURES NOT ATTRACTING THE PROTECTIONS OR REDRESS OF THE ACT	11
HOW CAN YOU MAKE A DISCLOSURE?	11
DISCLOSURES TO THE DEPARTMENT.....	12
WHO WITHIN THE DEPARTMENT DO YOU MAKE THE DISCLOSURE TO?	12
CONTENT AND DETAIL OF DISCLOSURES	12
WHAT IS THE ROLE OF THE PROTECTED DISCLOSURES COORDINATION MANAGER?.....	13
STAGES ASSOCIATED WITH A DISCLOSURE.....	13
STAGE 1: ASSESSMENT OF THE DISCLOSURE TO ASSESS WHETHER IT SHOULD BE TREATED AS A PROTECTED DISCLOSURE	13
STAGE 2: ASSESSMENT OF THE PROTECTED DISCLOSURE TO DETERMINE WHETHER/HOW IT CAN BE INVESTIGATED	14
STAGE 3: THE INVESTIGATION.....	15
FEEDBACK AND REVIEW OPTIONS.....	15
PROTECTIONS FOR THE DISCLOSER.....	16
PROTECTIONS FOR THE RESPONDENT.....	17
RECORDS	18
OTHER REPORTING CHANNELS / ALTERNATIVE PROCEDURES FOR CONSIDERATION	18
ADMINISTERING THE PROTECTED DISCLOSURES POLICY.....	19
ADMINISTRATION AND SUPERVISION OF THE PROTECTED DISCLOSURES POLICY	19
ANNUAL REPORT	19
ASSISTANCE	20
DATA PROTECTION	20
POLICY REVIEW.....	20
CONTACT DETAILS.....	20
APPENDIX 1	21

VOLUNTEERS	21
APPENDIX 2	23
EXTERNAL DISCLOSURE.....	23
<i>Certain Special Cases - Defined Categories of information.....</i>	<i>24</i>
APPENDIX 3	26
PROTECTIONS	26
<i>Protection of identity of the maker of a protected disclosure under Section 16</i>	<i>27</i>
APPENDIX 4	29
POLICY FOR LINE MANAGERS RECEIVING A DISCLOSURE	29
APPENDIX 5	34
PROTECTED DISCLOSURES NOTIFICATION FORM	34

DISCLOSURE POLICY STATEMENT FOR THE DEPARTMENT OF CHILDREN, EQUALITY, DISABILITY, INTEGRATION AND YOUTH

The purpose of this policy is to encourage and facilitate avenues for workers¹/staff to raise concerns within the workplace of the Department of Children, Equality, Disability, Integration and Youth so that appropriate action can be taken.

This policy is drafted principally for Protected Disclosures however, it may also be viewed as the Department's general disclosure policy and its desire to encourage staff to disclose any concerns.

The Secretary General and the Management Board of the Department of Children, Equality, Disability, Integration and Youth are committed to fostering an appropriate environment for addressing concerns relating to potential wrongdoing in the workplace and to providing the necessary support and protections for staff to raise concerns.

The Department's Governance Framework and the Department's current Statement of Strategy emphasise the importance of transparency as a guiding principle for the Department.

Under this policy, any staff member is entitled to raise concerns or issues or to disclose information without fear of penalisation or the threat of less favourable treatment, discrimination or disadvantage.

¹ Worker is as defined by Section 3 of the 2014 Protected Disclosures Act. For the purposes of this Policy the term worker is interchangeable with staff or staff member while maintaining the same meaning as per Section 3. The use of the term staff or staff member does not infer any employment relationship not governed by an employment contract.

INTRODUCTION

1. The Department of Children, Equality, Disability, Integration and Youth (“the Department”), is committed to the highest possible standards of integrity, propriety, accountability and openness and operates **a zero tolerance attitude** to wrongdoing, illegal practices and unethical conduct.
2. The occurrence of wrongdoing in the workplace undermines these standards and values and the purpose of this Protected Disclosures Policy is to assist and encourage staff to report this wrongdoing to the Department.
3. People who work in the Department will often be the first to notice the signs of wrongdoing and, therefore, play an essential part in its early detection. **Putting in place a receptive culture with appropriate procedures is central to encouraging staff to make disclosures directly to the Department rather than to a person outside the Department.**
4. For example, disclosing wrongdoing internally to the Department facilitates the Department in:-
 - i. Deterring wrongdoing in the public service;
 - ii. Ensuring early detection and remediation of potential wrongdoing;
 - iii. Reducing the risk of leaking of confidential information;
 - iv. Demonstrating to interested stakeholders, regulators and the courts that the Department is accountable and managed effectively;
 - v. Improving trust, confidence and morale of staff in the Department;
 - vi. Building a responsible and ethical organisational culture; and
 - vii. Limiting the risk of reputational and financial damage.
5. This policy aims to give effect to the obligations and provisions of the Protected Disclosures Act 2014 (“the 2014 Act” or “the Act”) under which the Department is required to have procedures in place to enable staff of the Department to make “protected disclosures”. The 2014 Act does not oblige a staff member to make a protected disclosure and it also does not absolve any staff member from pre-existing mandatory obligations to report under other legislation or indeed other policies or procedures.
6. This policy and the procedures outlined herein are not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures. **In particular, this policy does not replace the organisation’s grievance procedures and where the issue relates to an individual staff member’s contract of employment this matter should generally be referred under the Department’s Grievance Procedure.**
7. This document should be read in conjunction with the Protected Disclosures Act, 2014.

KEY PRINCIPLES AND COMMITMENT OF THE MANAGEMENT BOARD

8. The Secretary General and the Management Board of the Department of Children, Equality, Disability, Integration and Youth are committed to fostering an appropriate environment for addressing concerns relating to potential wrongdoing in the workplace and to providing the necessary support for staff to raise genuine concerns. The Secretary General and the Management Board are committed to creating a culture that encourages the making of protected disclosures and provides protection for disclosers.
9. Specifically, the Secretary General and the Management Board of the Department of Children, Equality, Disability, Integration and Youth are committed to the following:-
 - i. Facilitating, encouraging and promoting the disclosure of wrongdoing;
 - ii. Encouraging staff to make protected disclosures at the earliest possible opportunity;
 - iii. Assisting, supporting and protecting staff who make protected disclosures;
 - iv. Protecting a staff member's identity in a manner consistent with the requirements of the 2014 Act and taking action where those requirements have been breached;
 - v. Assessing any disclosure made, conducting an investigation, where warranted, and addressing all findings that require attention;
 - vi. Providing that staff are not to be penalised for reporting relevant wrongdoings; and
 - vii. Providing staff procedures on how to make protected disclosures.
10. The following key principles inform this Policy:
 - All disclosures of wrongdoing in the workplace should, as a matter of routine, be the subject of an appropriate assessment and/or investigation and the identity of the discloser should be adequately protected; and
 - Providing that the staff member discloses information relating to wrongdoing, in an appropriate manner, and based on a reasonable belief, **no question of penalisation should arise.**
11. These procedures set out the process by which a staff member of the Department can make a protected disclosure, what will happen when a disclosure is made and what the Department will do to protect the discloser.

WHAT IS A PROTECTED DISCLOSURE?

12. A protected disclosure in the 2014 Act is a disclosure of information, which in the reasonable belief of the staff member, tends to show one or more relevant wrongdoings which came to the attention of the staff member in connection with the staff member's employment and is disclosed in the manner described in the Act.

WHO CAN MAKE A DISCLOSURE UNDER THIS POLICY?

DEPARTMENT STAFF

13. Wrongdoing may come to the attention of, and a disclosure can be made by, any staff member. In line with the inclusive approach, which underpins this disclosure policy, a staff

member is broadly set out so that any current and former employee, independent contractor, sub-contractor, agency workers, or apprentice in the Department and any person who interacts with the work place on a contractual basis should be considered a staff member for the purposes of this policy. The use of the term staff or staff member does not infer any employment relationship not governed by an employment contract.

STAFF IN AEGIS BODIES OF THE DEPARTMENT FOR CHILDREN, EQUALITY, DISABILITY, INTEGRATION AND YOUTH

14. Staff in aegis bodies of the Department of Children, Equality, Disability, Integration and Youth are permitted by the Act to disclose to their parent Minister, this can be actioned through disclosure to their parent Department – i.e. disclosure to the Department of Children, Equality, Disability, Integration and Youth. Staff in aegis bodies of the Department of Children, Equality, Disability, Integration and Youth can therefore disclose to this Department in line with the procedures outlined in this policy and where applicable, they should be considered a staff member for the purposes of this policy. The use of the term staff or staff member does not infer any employment relationship not governed by an employment contract.
15. Aegis bodies of the Department include: Tusla – Child and Family Agency, Adoption Authority of Ireland, the National Disability Authority, Oberstown Children Detention Schools, Office of the Ombudsman for Children and Gaisce, The President's Award.
16. However, staff in aegis bodies are encouraged, at least initially, to disclose to the aegis body, remembering also that they should be entitled to have a decision made by their aegis body reviewed by the aegis body at an appropriate level.
17. Where disclosures are made to this Department from these staff, the disclosure should be made to the Department in line with this policy and the disclosure will be processed and the discloser protected by this Department in line with this policy.
18. When the Department receives a disclosure from a staff member of an aegis body, the background to the disclosure (e.g. whether the disclosure was previously disclosed and if so the outcome of that process) and the context of it (e.g. the substantive matters around the disclosure) will be important. A staff member of an aegis body making a disclosure should be aware that the Department will need to communicate with the State body to seek all relevant information to properly investigate the matter. In doing this the Department will take all reasonable steps to maintain the confidentiality of the process. While protecting the discloser's identity is paramount in all circumstances, there may be some limited situations in which the identity of the discloser may need to be revealed (including to the aegis body) as set out in Section 16 of the Act (e.g. where it is necessary for the effective investigation of the matter or in the public interest etc. – see Section 16 for full details).

VOLUNTEERS

19. The 2014 Act does not specifically cover volunteers and accordingly they do not benefit from the Act's protections. Notwithstanding this, the Department of Children, Equality, Disability, Integration and Youth intends to investigate reports of wrongdoing from volunteers as if they were protected disclosures and encourages volunteers to disclose malpractice to the Department. Volunteers should refer to Appendix 1 of this policy for details on how they can go about disclosing to the Department and how they will be protected in doing this.

Volunteers are individuals who provide services or work with the Department on a non-remunerated basis.

WHAT TYPES OF DISCLOSURES CAN BE RAISED UNDER THIS POLICY?

20. This policy deals with disclosures that relate to 'relevant wrongdoings'. These correspond to the relevant wrongdoings in the Protected Disclosures Act 2014(Section 5(3)(a)-(h)):-
- a) that an offence has been, is being or is likely to be committed;
 - b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services,;
 - c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
 - d) that the health and safety of any individual has been, is being or is likely to be endangered;
 - e) that the environment has been, is being or is likely to be damaged;
 - f) that an unlawful, corrupt or irregular use of public monies or resources has occurred, is occurring or is likely to occur;
 - g) that an act, omission, or course of conduct by a public official is oppressive, improperly discriminatory, or grossly negligent, or constitutes gross mismanagement;
 - h) that information tending to show that any matter falling within any one of the preceding paragraphs, whether alone or in combination, has been, is being or is likely to be deliberately concealed or destroyed.

WHAT TYPE OF DISCLOSURES SHOULD GENERALLY NOT BE RAISED UNDER THIS POLICY?

21. This policy should not be used for personal complaints. Personal employment complaints will generally be dealt with under the internal grievance or dignity at work, procedures. For example, a member of staff may complain that there is a breach of their own terms and conditions. That type of complaint will generally be dealt with under the grievance (or equivalent) procedure. Alternatively, a member of staff may claim that they are being bullied or harassed by a colleague. That type of complaint will generally be dealt with under the dignity at work (or equivalent) procedure.
22. In addition, it should be noted that this Policy:
- does not cover disclosures of wrongdoing if the matter is one which it is the function of the staff member or the staff member's employer to detect, investigate or prosecute unless it involves or consists of an act/omission on the part of the employer;
 - is not a replacement for existing mandatory reporting schemes;
 - does not cover a disclosure where the staff member knowingly conveys false information. If it transpires that a staff member makes a disclosure, which they

know to be false or do not believe to be true, the Department may take disciplinary or other appropriate action.

REASONABLE BELIEF

23. A staff member must have a reasonable belief that the information disclosed shows, or tends to show, wrongdoing. The term “reasonable belief” does not mean that the belief has to be correct. Staff are entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.
24. It may be quite reasonable for a staff member to believe that a wrongdoing is occurring on the basis of what he or she observes. A staff member may not know all the facts of the case and the staff member is not required or entitled to investigate matters himself/herself to find proof of their suspicion and should not endeavour to do so. That means that in some cases the staff member may have reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the staff member was mistaken.
25. No staff member will be penalised simply for getting it wrong, so long as the staff member had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.
26. However, a disclosure made in the absence of a reasonable belief (for example where false allegations are deliberately made or made without any reasonable belief in the truth of the allegations) will not attract the protection of the 2014 Act and, furthermore, may result in disciplinary action against the discloser.
27. The staff member must be motivated by the public interest if the disclosure concerns unlawful acquisition, use or disclosure of a trade secret and if the discloser is not motivated by public interest the Department may take disciplinary action.

SOME PRACTICAL POINTS WHEN MAKING A DISCLOSURE

DISCLOSURE OF INFORMATION

28. A protected disclosure should contain “information” which tends to show wrongdoing. The ordinary meaning of disclosing “information” is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation on the basis of a suspicion that is not founded on anything tangible.
29. Staff should not investigate matters themselves to find proof of their suspicion and should not endeavour to do so². All staff need to do, and should do, is disclose the information that they have, based on a reasonable belief that it discloses a wrongdoing and, where the information relates to an individual, that it is necessary to disclose that information.

² Any improper or unlawful means used by a worker/ staff member to investigate matters (e.g. unlawful or improper access to computer systems or databases) will be subject to the normal disciplinary, criminal or other consequences even if those means resulted in information that amounts to a protected disclosure.

30. Persons making a protected disclosure should be encouraged to frame it in terms of information that has come to their attention rather than seeking to draw conclusions about particular individuals or specific offences.

ANONYMOUS DISCLOSURES

31. An anonymous disclosure is where a discloser withholds their identity, and a confidential disclosure is where identity is protected by the recipient. Anonymous disclosures made by staff are not excluded from the protection of the 2014 Act. Anonymous disclosures will be acted upon to the extent that this is possible, although the ability to investigate may be constrained in the absence of the knowledge of the identity of the discloser.
32. It should be noted that keeping the discloser informed and protecting a discloser from penalisation may be difficult or impossible to apply unless the staff member's anonymity lifts. Furthermore, a staff member cannot obtain redress under the 2014 Act without identifying themselves.

DISCLOSURES NOT ATTRACTING THE PROTECTIONS OR REDRESS OF THE ACT

33. The information must come to the attention of the staff member in connection with his / her employment, but a disclosure of any wrongdoing which is the staff member's, or the staff member's employer's, function to detect, investigate or prosecute does not come within the terms, or attract the protections and redress, of the 2014 Act unless it involves an act or omission on the part of the employer.

HOW CAN YOU MAKE A DISCLOSURE?

34. To be a protected disclosure and therefore to gain the protections of the 2014 Act you have to disclose in the manner prescribed by the Act. The 2014 Act provides for both internal disclosure by a staff member (i.e. disclosure to the employer or the employer's independent nominees outside the organisation) and for external disclosure (disclosure outside the employer).
35. The simplest form of disclosure, and the form the Department encourages is to internally disclose to the employer (for staff of the Department that means disclosing to the Department) where all that is required is a reasonable belief that the information disclosed shows or tends to show a relevant wrongdoing. This is a deliberately low threshold designed to ensure that most reports are made to the person best placed to correct the alleged wrongdoing – the employer. Disclosure to the Department will be taken seriously and the discloser will receive appropriate protections.
36. As mentioned above, **the Department encourages staff of its aegis bodies to disclose internally in line with the relevant body's Protected Disclosure Policy**, at least initially - that means disclosing to their aegis body where all that is required is a reasonable belief that the information disclosed shows or tends to show a relevant wrongdoing. **All aegis bodies are expected to have a protected disclosure policy in place.** If, staff of an aegis body wish to disclose externally, outside of their aegis body, then those staff are encouraged to disclose

to the Department, where again, all that is required is a reasonable belief that the information disclosed shows or tends to show a relevant wrongdoing.

37. There are other external disclosure options provided for by the Act and detail on the various external disclosure avenues are contained in Appendix 2.

DISCLOSURES TO THE DEPARTMENT

WHO WITHIN THE DEPARTMENT DO YOU MAKE THE DISCLOSURE TO?

38. Disclosures should ideally be made to an individual's line manager or Head of Unit (generally PO level) in the first instance or alternatively if an individual feels unable to raise the matter with their immediate line management, the disclosure may be raised directly with the Protected Disclosures Coordination Manager, whose details are outlined below at Paragraph 99. The Protected Disclosures Coordination Manager can also arrange for a staff member to make a disclosure to the Department's independent nominees outside the organisation.
39. The persons who receive a disclosure are referred to as "recipients" or "disclosure recipients".

CONTENT AND DETAIL OF DISCLOSURES

40. Disclosures should ideally be made in writing ideally using the Protected Disclosure Notification Form (Appendix 5) and should at a minimum:
- state that the disclosure is being made under the Protected Disclosure procedure;
 - provide the discloser's name, position in the organisation, place of work and confidential contact details;
 - be clear and factual;
 - the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
 - whether or not the wrongdoing is still on-going;
 - indicate whether the wrongdoing has already been disclosed and if so to whom, when and what action was taken;
 - provide relevant information in respect of the relevant wrongdoing;
 - avoid speculation, personal attacks and emotive language;
 - where possible, identify whether there were any witnesses to the disclosed conduct (*to minimise the processing of personal data, simply indicate if there were witnesses and do not name the witnesses at this juncture).
41. If the disclosure is made verbally, the disclosure recipient (the line management or the Protected Disclosures Coordination Manager), should capture the above information in a record and will show the draft record to the discloser to provide the discloser an opportunity to sign off and comment on it before the final version is agreed.

42. Persons making a protected disclosure should be encouraged to frame it in terms of information that has come to their attention rather than seeking to draw conclusions about particular individuals or specific offences. For data protection reasons, to minimise the processing of personal data, the staff member making a protected disclosure should only reference a specific person when it is absolutely necessary to do that to make the protected disclosure (i.e. it would not otherwise be possible for the staff member to make the protected disclosure).
43. The disclosure recipient may use the Protected Disclosure Notification Form (Appendix 5) to structure the recording of verbal disclosures.

WHAT IS THE ROLE OF THE PROTECTED DISCLOSURES COORDINATION MANAGER?

44. The Protected Disclosure Coordination Manager offers support and assistance to the disclosure recipient and will generally be told of all protected disclosures made to Department staff members.
45. The Protected Disclosure Coordination Manager may also be a disclosure recipient where the discloser feels they cannot make a disclosure to anyone else (e.g. regarding a Management Board member, their Line Manager or Head of Unit).
46. The Protected Disclosure Coordination Manager can arrange for a staff member to make a disclosure to the Department's independent nominees outside the organisation.
47. The Protected Disclosure Coordination Manager will also act as an intermediary/gate keeper on the engagement of in-house or external legal advisors, experts, consultants or other appropriate bodies/persons.
48. The Protected Disclosure Coordination Manager should also be made aware of any possible protected disclosures made to a Department staff member.
49. Alternative arrangements will apply in relation to the notification of and the role of the Protected Disclosure Coordination Manager if the disclosure relates specifically to the Protected Disclosure Coordination Manager or if the discloser otherwise so requests. These alternative arrangements should ensure that the essence of and steps in this Policy and the notification procedures (notification to Secretary General, Internal Audit etc.) are nonetheless adhered to.
50. In accordance with Data Protection rules, in the Protected Disclosure Coordination Manager's interaction with disclosure recipients, the processing of personal data should be minimised, therefore, disclosure recipients should only provide information identifying the discloser or the respondent where that is strictly necessary.

STAGES ASSOCIATED WITH A DISCLOSURE

STAGE 1: ASSESSMENT OF THE DISCLOSURE TO ASSESS WHETHER IT SHOULD BE TREATED AS A PROTECTED DISCLOSURE

51. The first step in the process is undertaking an initial examination to assess whether or not the disclosure should be treated as a protected disclosure, having regard to the provisions of the 2014 Act or whether for example, the disclosure is a personal employment complaint and is more appropriately dealt with under the grievance procedure/dignity at work.
52. The gathering of the detail as outlined above in paragraph 40 is fundamental to this assessment process.
53. Upon receipt of a disclosure the Protected Disclosure Coordination Manager should be informed unless the disclosure relates specifically to the Protected Disclosure Coordination Manager or the discloser otherwise so requests in which cases alternative arrangements will apply. The discloser should be informed that this will happen as part of the process.
54. This assessment will be carried out by the disclosure recipient in consultation with the Protected Disclosures Coordination Manager or where the disclosure has been made to the Protected Disclosures Coordination Manager directly, by the Protected Disclosures Coordination Manager.
55. In all cases however, if the disclosure is relevant to a particular Unit of the Department it is that unit's responsibility, (Principal Officer level) to lead this assessment of the disclosure in consultation with the Protected Disclosure Coordination Manager unless the Protected Disclosures Manager considers (at the request of the discloser or otherwise) that this is not appropriate.
56. The Protected Disclosures Coordination Manager may arrange for appropriate assistance in making any determination and assistance may be in-house or from external legal advisors, experts, consultants or other appropriate bodies/persons.
57. The general principle is that, if it is unclear whether the disclosure qualifies as a protected disclosure, the recipient should treat the disclosure as a protected disclosure (and protect the identity of the discloser in accordance with the Procedures) until satisfied that the information is not a protected disclosure.
58. In general where a protected disclosure is made during an investigation, disciplinary or other process, this should not affect those distinct processes, except where the investigation, disciplinary or other action represents, in essence, a form of penalisation for making a protected disclosure.

STAGE 2: ASSESSMENT OF THE PROTECTED DISCLOSURE TO DETERMINE WHETHER/HOW IT CAN BE INVESTIGATED

59. Where it is considered that the matter is a protected disclosure the next step is to consider whether the alleged wrongdoing is something that can or should be investigated or not, and, if so, what steps should be taken as part of such an investigation. While it is envisaged that protected disclosures as a general rule will be investigated, in certain occasions it may not be appropriate to investigate the matter (e.g. if the matter is already the subject of investigation by An Garda Síochaná or the matter has already been investigated on foot of a previous protected disclosure etc.).
60. This assessment is carried out by/through the same process as outlined above. That is to say, by the disclosure recipient in consultation with the Protected Disclosures Coordination Manager or where the disclosure has been made to the Protected Disclosures Coordination

Manager directly, by the Protected Disclosures Coordination Manager or, if relevant and appropriate, led by the particular unit (in consultation with the Protected Disclosures Coordination Manager).

61. The Protected Disclosures Coordination Manager may arrange for appropriate assistance in making any determination and assistance may be in-house or from external legal advisors, experts, consultants or other appropriate bodies/persons.

STAGE 3: THE INVESTIGATION

62. Where it is considered that an investigation is warranted in respect of a disclosure, the Protected Disclosures Coordination Manager will work with the disclosure recipient to determine a terms of reference for the investigation and will arrange as soon as is practicable, that an investigation is commenced.
63. The Protected Disclosures Coordination Manager may arrange appropriate assistance in making this determination and assistance may be in-house or from external legal advisors, experts, consultants or other appropriate bodies/persons.
64. Investigations will be carried out, as appropriate depending on the nature and scale of the alleged wrongdoing (the Secretary General having the ultimate authority and direction in this regard). The investigation may be carried out by an internal staff member of the Department or it may be carried out externally, for example by appropriate experts/bodies/persons (e.g. referral of the matter to An Garda Síochaná or other appropriate public authority).

FEEDBACK AND REVIEW OPTIONS

Feedback

65. Staff making protected disclosures should be provided with periodic feedback in relation to the matters disclosed and be advised when consideration of the disclosure is complete, except in exceptional cases. This does not require the Department to give a complete account of what the situation is at a particular point in time in terms of progress, but the Department should generally give reassurance and affirmation that the matter is receiving attention.
66. Any information and feedback should be provided in confidence. There is no obligation to inform the discloser of the progress, or outcome, of any disciplinary process involving another staff member which may arise on foot of an investigation occasioned by a protected disclosure. In general, such information is confidential between the employer and the staff member who is the subject of a disciplinary process. A discloser should be informed that appropriate action has been taken but is not generally entitled to know what that action was.
67. The overriding requirement when providing feedback is that no information is communicated that could prejudice the outcome of the investigation or any action that ensues (e.g. disciplinary, or other legal action, including prosecution) for example, by undermining the right to fair procedures enjoyed by the person against whom a report or allegation is made.

Review

68. While a discloser may not know what action was taken (as per paragraph 65), if the discloser is not satisfied with the outcome of any assessment/investigation undertaken in respect of their disclosure then the discloser has the right to ask the Protected Disclosures Coordination Manager or the original disclosure recipient (i.e. their line manager/Head of Unit) that the decision be reviewed. In either event, the Protected Disclosures Coordination Manager will endeavour to arrange for a suitable review by a person/body who has not been previously involved. The review may be carried out by an internal staff member of the Department or it may be carried out externally, for example by appropriate experts/bodies/persons.
69. While it is envisaged that as a general rule reviews will be provided, in certain occasions it may not be appropriate to review the matter (e.g. if the matter is the subject of investigation by An Garda Síochaná) and the ultimate discretion rests with the Secretary General.
70. The Protected Disclosures Coordination Manager may require and procure appropriate assistance in making this determination and assistance may be in-house or from external legal advisors, experts, consultants or other appropriate bodies/persons.
71. There is no entitlement to two reviews in respect of the same issue.

PROTECTIONS FOR THE DISCLOSER

72. Staff making a protected disclosure will have the assistance of the Employee Assistance Programme (or equivalent services).
73. The Department will not (and it will use all reasonable endeavours to ensure that its employees do not) subject the discloser to any penalisation/detriment on the grounds of the disclosure of information under this procedure.
74. Staff of the Department who feel that they are being subjected to adverse treatment should report the matter immediately to the Head of HR and/or the Head of Unit and/or Protected Disclosure Coordination Manager who will arrange for the matter to be considered, remediated where appropriate, investigated as necessary and assess if and what appropriate disciplinary proceedings are necessary. If a complaint is made of penalisation contrary to the 2014 Act, then that complaint will be dealt with, having regard to the continued obligation to protect the identity of the discloser under the Act.
75. While protecting the discloser's identity is paramount in some limited situations the identity of the discloser may need to be revealed as set out in Section 16 of the Act (e.g. where it is necessary for the effective investigation of the matter or in the public interest – see Section 16 of the Act for full details).
76. The Protected Disclosures Coordination Manager must be made aware of complaints of penalisation and any review initiated. Although, they should only be provided with information identifying the discloser or the respondent where that is strictly necessary.
77. For further detail on the statutory protections for the discloser who makes a “protected disclosure” please see Appendix 3.

78. No disciplinary action will be taken against anyone for making a disclosure in accordance with this procedure. This will not prevent the Department from bringing disciplinary action in cases where there are grounds to believe that a disclosure was made without any reasonable belief that it demonstrates relevant wrongdoings or where an external disclosure was made in breach of the requirements surrounding external disclosure as set out in Sections 6 – 10 of the Protected Disclosures Act. An individual who persists in making allegations which have been found after due process to be unsubstantiated may face disciplinary action for pursuing malicious or vexatious allegations.
79. A person to whom a protected disclosure is made, and any person to whom a protected disclosure is referred in the performance of that person's duties, shall not disclose to another person any information that might identify the discloser unless:-
- the person to whom the protected disclosure was made or referred shows that he or she took all reasonable steps to avoid disclosing the identity of a discloser; or
 - the person to whom the protected disclosure was made or referred has a reasonable belief that the discloser does not object to the revelation of identity; or
 - the person to whom the protected disclosure was made or referred had a reasonable belief that it was necessary for:
 - the investigation of the wrongdoing concerned (for example, if the anonymity of the discloser is incompatible with a fair investigation of allegations against a named individual);
 - to prevent serious risk to State security, public health, public safety and the environment;
 - to prevent crime or the prosecution of a criminal offence crime or is warranted by the public interest;or
 - where the disclosure is otherwise necessary in the public interest or is required by law.
80. Where it is decided that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser will be informed of this decision in advance of the disclosure, except in exceptional cases and if possible the discloser's consent will be obtained prior to any action being taken that could identify them. Except in exceptional cases, a discloser may appeal a decision to disclose his or her identity and the discloser will be informed of this review process. Further detail on the protections available to the discloser, including the protection of their identity is contained in Appendix 3.

PROTECTIONS FOR THE RESPONDENT

81. Where an allegation is made against an individual (the Respondent), it is important to ensure that the Respondent is afforded appropriate protection, this means that the principles of fair procedures and natural justice apply.

82. In many cases, the Respondent's right to fair procedures may include a right to challenge the evidence against him / her. This right will need to be balanced against rights contained in the 2014 Act, such as the discloser's right to have his / her identity protected (which is, nevertheless, not absolute and may not be applied, for example, in cases where the disclosure recipient reasonably believes that this is necessary for the effective investigation of the wrongdoing concerned).
83. The procedures that will apply in the approach to protected disclosure investigations will be informed by the procedures that normally apply in the Department when other allegations are investigated.
84. The Head of Human Resources (HR), in consultation with the Protected Disclosure Coordination Manager, will arrange that appropriate supports and protections are available as and when appropriate.

RECORDS

85. As it is not possible to know at the time of disclosure whether the disclosure will subsequently be deemed protected under the 2014 Act, written records, including timelines, in relation to any assessment and/or investigation undertaken should be maintained by the recipient handling the protected disclosure.

OTHER REPORTING CHANNELS / ALTERNATIVE PROCEDURES FOR CONSIDERATION

86. This policy does not replace the organisation's grievance procedures, in particular where the issue relates to an individual staff member's contract of employment this matter should be referred under the Department's Grievance Procedure.
87. This policy aims to give effect to the obligations and provisions of the Protected Disclosure Act, 2014, and does not replace any legal reporting or disclosure requirements arising under other legislation or indeed other policies or procedures or under contract.
88. If a discloser has other reporting obligations under any other pieces of legislation or any other policies etc., particularly where there is a mandatory reporting requirement then those requirements must be fully complied with.
89. Examples of other legislation which contain reporting provisions include:-
- Ethics in Public Office Acts 1995;
 - Standards in Public Office Act 2001;
 - Protections for Persons Reporting Child Abuse Act 1998;
 - Competition Act 2002;
 - Garda Síochána Act 2005;
 - Safety Health and Welfare at Work Act 2005;
 - Employment Permits Act 2006;

- Consumer Protection Act 2007;
- Communications Regulation Act 2002;
- Charities Act 2009;
- Criminal Justice Act 2011;
- Criminal Justice (Corruption Offences) Act 2018

The above list is not intended to be exhaustive.

ADMINISTERING THE PROTECTED DISCLOSURES POLICY

ADMINISTRATION AND SUPERVISION OF THE PROTECTED DISCLOSURES POLICY

90. Head of Internal Audit (HIA), or a senior member of the Internal Audit team in the absence of the HIA, shall be apprised by the Protected Disclosures Coordination Manager of all relevant matters. They will be notified by the Protected Disclosures Coordination Manager of the nature of each disclosure in a summarised and wherever possible anonymous/redacted format within 10 working days of receipt of the protected disclosure as well as being updated on the progression of the disclosure through the various stages and all relevant information, including reviews, complaints of penalisation and completion of the matter. Once the assessment is made that the protected disclosure is complete (i.e. this is the responsibility of the recipient and/or Protected Disclosure Coordination Manager), all records (including the outcome) should be furnished to the Head of Internal Audit who will maintain these records securely for as long as is deemed necessary and in compliance with all data protection rules. These are to be furnished by the line manager/Head of Division, where they were the disclosure recipient or by the Protected Disclosure Coordination Manager where they were the disclosure recipient. The Protected Disclosure Coordination Manager should at all times be advised when an assessment is made that the protected disclosure is complete.
91. The Head of Internal Audit will update the Department's Audit Committee periodically on disclosures and wherever possible on an anonymised basis. As a general rule, the detail given will not identify the discloser or any respondent unless necessary. The Secretary General (who may brief the Management Board, the Minister and any other suitable person/body as considered appropriate) will be apprised by the Protected Disclosures Coordination Manager of all relevant matters as appropriate. As a general rule, the detail given will not identify the discloser or any respondent unless necessary. Alternative arrangements will apply if the disclosure relates specifically to the Secretary General.
92. The Secretary General has the ultimate authority in relation to the nature of the investigation that takes place if a decision is made to investigate the disclosure.

ANNUAL REPORT

93. No later than 30 June each year, the Department's Internal Audit Unit will publish a report on protected disclosures in the previous year. Coordination of this information is the responsibility of Internal Audit, in consultation with the Protected Disclosures Coordination Manager. Specifically, such a report will outline:

- the number of protected disclosures made to the body;
- the resulting action;
- any other action and information requested by the Minister for Public Expenditure and Reform.

94. This Report must be in a form which does not enable the identification of the persons involved.

95. The Department's annual report will also report on protected disclosures in a suitable manner based on information supplied by Internal Audit.

ASSISTANCE

96. The Protected Disclosures Coordination Manager and/or Head of Human Resources may require and procure appropriate assistance at any stage of the process (including around assessing penalisation of staff and requests for review) and assistance may be in-house or from external legal advisors, experts, consultants or other appropriate bodies/persons.

DATA PROTECTION

97. The principles of data protection will apply to the operation of this policy. This includes ensuring that there are adequate and appropriate safeguards around the protected disclosures process and minimising the processing of personal data so that only personal data that is adequate, relevant and limited to what is necessary is processed.

POLICY REVIEW

98. This policy will be reviewed as and when required and at least every two years.

CONTACT DETAILS

99. Protected Disclosures Coordination Manager:

Mr Andrew Patterson,
Principal Officer
Block 1 - Floor 3, Miesian Plaza, 50-58 Baggot Street Lower,
Dublin 2, D02 XW14. Freepost F5055
e: protected_disclosures@equality.gov.ie

100. Approved by Management Board 8/11/2019

APPENDIX 1

VOLUNTEERS

1. The 2014 Act does not specifically cover volunteers and accordingly they do not benefit from the Act's protections. Notwithstanding this, the Department of Children, Equality, Disability, Integration and Youth intends to investigate reports of wrongdoing from volunteers as if they were protected disclosures.
2. The Department encourages volunteers to disclose the type of wrongdoings discussed in this policy to the Department and wants to assure volunteers that their disclosures will be dealt with confidentially and without any retribution and will be assessed and/or investigated as appropriate.
3. Volunteers should disclose wrongdoings to the Protected Disclosures Coordination Manager.
4. A person to whom a protected disclosure is made, and any person to whom a protected disclosure is referred in the performance of that person's duties, shall not disclose to another person any information that might identify the discloser unless:-
 - the person to whom the protected disclosure was made or referred shows that he or she took all reasonable steps to avoid disclosing the identity of a discloser; or
 - the person to whom the protected disclosure was made or referred has a reasonable belief that the discloser does not object to the revelation of identity; or
 - the person to whom the protected disclosure was made or referred had a reasonable belief that it was necessary for
 - a) the investigation of the wrongdoing concerned (for example, if the anonymity of the discloser is incompatible with a fair investigation of allegations against a named individual),
 - b) to prevent serious risk to State security, public health, public safety and the environment, or
 - c) to prevent crime or the prosecution of a criminal offence crime or is warranted by the public interest;or
 - d) where the disclosure is otherwise necessary in the public interest or is required by law.
5. Where it is decided that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser will be informed of this decision in advance of the disclosure, except in exceptional cases and if possible the discloser's consent will be obtained prior to any action being taken that could identify them. Except in exceptional cases, a discloser may appeal a decision to disclose his or her identity and the discloser will be informed of this review process.
6. If a volunteer has other reporting obligations under any other pieces of legislation or any other policies etc., particularly where there is a mandatory reporting requirement then those requirements must be fully complied with.
7. Examples of other legislation which contain reporting provisions include:-

- Ethics in Public Office Acts 1995;
- Standards in Public Office Act 2001;
- Protections for Persons Reporting Child Abuse Act 1998;
- Competition Act 2002;
- Garda Síochána Act 2005;
- Safety Health and Welfare at Work Act 2005;
- Employment Permits Act 2006;
- Consumer Protection Act 2007;
- Communications Regulation Act 2002;
- Charities Act 2009;
- Criminal Justice Act 2011;
- Criminal Justice (Corruption Offences) Act 2018.

The above list is not intended to be exhaustive.

APPENDIX 2

EXTERNAL DISCLOSURE

1. Staff must make a disclosure in the manner set out in the Act to gain the protections of the Act.
2. The simplest form of disclosure is internally to the employer and this is the form of disclosure the Department recommends. For staff of the Department this is disclosure to the Department. For staff of aegis bodies, this is the State body you work for.
3. It should be possible in most, if not all cases, for staff to make protected disclosures internally to their employer, at least in the first instance.
4. There are external options for disclosure permitted under the Act and in general (except in relation to disclosure to the relevant Minister, to the other responsible person and to a legal advisor), higher standards apply when the protected disclosure is being made externally. The external disclosure options are summarised below and for further detail on external disclosures please see Sections 6-10 of the Protected Disclosures Act.
5. The Act identifies the following avenues for making a protected disclosure outside the employer:
 - a) **Other responsible person:** Where the staff member reasonably believes that the wrongdoing relates to the conduct of a person other than the staff member's employer or to something for which that other person has legal responsibility, then the staff member can disclose to that other person.
 - b) **A prescribed person:** Certain persons are prescribed by Statutory Instrument 339/2014 (as amended by SI 448/2015 and 490/2016) to receive protected disclosures ("prescribed persons"). This includes the heads or senior officials of a range of statutory bodies. Examples of prescribed persons include; the Comptroller and Auditor General, the Data Protection Commissioner, the Chief Executive of the Health and Safety Authority etc. Under Section 7 (2) of the 2014 Act, the Minister for Public Expenditure and Reform may by order:
 - prescribe such persons as, by reason of the nature of their responsibilities or functions, appear appropriate to be recipients of disclosures of relevant wrongdoings falling within the description of matters in respect of which they are prescribed, and
 - prescribe in respect of each prescribed person such description of matters as appears appropriate by reason of the nature of the responsibilities or functions of the person.

At this time the Adoption Authority of Ireland is the only prescribed body under the aegis of this Department. As per S.I. No. 339/2014, the Chief Executive Officer of the Adoption Authority can receive protected disclosures in relation to:

- all matters relating to registration and supervision of the Adoption Societies registered in accordance with the Adoption Act 2010 and the maintenance of the Adoption Societies Register.
- all matters relating to the granting of declarations of eligibility and suitability to prospective adopters in advance of their adopting abroad and for maintaining the Register of Foreign Adoptions under the Adoption Act of 1991 (No. 14 of 1991).

The Protected Disclosures Act will only apply to disclosures made to a prescribed person in this way if:

- the person making the disclosure reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed,
 - the person making the disclosure reasonably believes that the information disclosed, and any allegation contained in it, are substantially true. This is an additional requirement when disclosing to a prescribed body and provided for in the 2014 Act.
- c) **A Minister of the Government:** A staff member in a body under the aegis of the Minister for Children , Equality, Disability, Integration and Youth can make a protected disclosure to the Minister for Children , Equality, Disability, Integration and Youth. This type of disclosure can also be actioned by disclosing to the Department for Children , Equality, Disability, Integration and Youth under the Department’s Protected Disclosures Policy.
- d) **A legal adviser:** The 2014 Act allows a protected disclosure to be made by a staff member in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in section 6 of the Trade Union Act 1941).
- e) **Alternative external disclosures (in very limited circumstances)** (*section 10 of the Act*): In very limited circumstances a staff member can disclose in accordance with section 10. It should be noted that there are stringent requirements for alternative external disclosures (for example seeking to disclose directly to the media) to qualify as protected disclosures under Section 10 of the Act.

Certain Special Cases - Defined Categories of information

6. In order to take account of certain special cases, the Protected Disclosures Act provides, under Section 17, for disclosure of information that might reasonably be expected to facilitate the commission of an offence or to prejudice or impair:
- a) the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for any of those matters;
 - b) the enforcement or administration of, or compliance with, any law;
 - c) lawful methods, systems, plans or procedures employed for ensuring the safety of the public or the safety or security of persons or property;
 - d) the fairness of proceedings before a court or tribunal;
 - e) the security of a relevant institution;
 - f) the security of any system of communications of the Garda Síochána, the Defence Forces or a relevant institution.

Section 17 should be consulted further when a disclosure of such information is contemplated.

7. The Act also provides, under Section 18, for disclosure of information that might reasonably be expected:
- a) to affect adversely
 - i. the security of the State;
 - ii. the defence of the State ;
 - iii. the international relations of the State.
 - or
 - b) to reveal, or lead to the revelation of, the identity of a person who has given information in confidence to a public body (including Government Department) in relation to the

enforcement or administration of the law or any other source of such information given in confidence.

In such a case, the Act provides for disclosure to be made to the Disclosures Recipient appointed by the Taoiseach for this purpose in accordance with Schedule 3 of the Act.

APPENDIX 3

PROTECTIONS

1. The 2014 Act provides specific remedies for staff who suffer because of making a protected disclosure.
2. Penalisation of a person who makes a protected disclosure will not be tolerated by the Department. The definition of penalisation includes:
 - suspension or dismissal;
 - demotion or loss of opportunity for promotion;
 - transfer of duties, changes of location of place of work, reduction in wages or change in working hours (jurisprudence, subsequent to the enactment of the legislation, clarifies that transfer of duties in the Civil Service context does not necessarily amount to penalisation under the Act);
 - the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty);
 - unfair treatment;
 - coercion, intimidation or harassment;
 - discrimination, disadvantage or unfair treatment;
 - injury, damage or loss;
 - threat of reprisal.
3. Staff of the Department who feel that they are being subjected to adverse treatment should report the matter immediately to the Head of HR and/or the Head of the Unit and/or Protected Disclosure Coordination Manager who will arrange for the matter to be considered, remediated where appropriate, investigated as necessary and assess if and what appropriate disciplinary proceedings are necessary. If a complaint is made of penalisation contrary to the 2014 Act, then that complaint will be dealt with, having regard to the continued obligation to protect the identity of the discloser under the Act.
4. A review of the outcome of any assessment/investigation in respect of any complaint of penalisation may be sought by the discloser. If a review is requested then the staff member should report the matter immediately to Head of HR and/or the Head of the Unit and/or Protected Disclosure Coordination Manager who will arrange for a review by someone who has not been involved in any stage of the Protected Disclosures process in respect of the person at issue. There is no entitlement to two reviews in respect of the same issue.
5. The Protected Disclosures Coordination Manager should be made aware of complaints of penalisation and any review initiated. Although, they should only be provided with information identifying the discloser or the respondent where that is strictly necessary.
6. The Head of Internal Audit should also be made aware of complaints of penalisation and any review initiated however, wherever possible the anonymity of the disclosure should be maintained.
7. Employees, as defined in the Protected Disclosures Act, are protected from dismissal and penalisation as a result of having made a protected disclosure as per Sections 11 and 12 of the Act and have access to the State's dispute resolution machinery in this regard (i.e. the Workplace Relations Commission).

8. All staff (including employees) in making a protected disclosure have civil and criminal immunity (on terms as provided for in Sections 14 and 15 of the Act), and are entitled to take an action in tort for suffering detriment (as provided for in Section 13), or suffering loss arising out of a breach of their identity (as provided for in Section 16).

Protection of identity of the maker of a protected disclosure under Section 16

9. Where a staff member makes a protected disclosure, there is a legal obligation on the Recipient (and any person to whom a protected disclosure is referred in the performance of that person's duties) of a disclosure to keep their identity confidential.
10. The Recipient of a disclosure (and any person to whom a protected disclosure is referred in the performance of that person's duties) must not disclose to another person any information that might identify the discloser except when:
 - the person to whom the protected disclosure was made or referred shows that he or she took all reasonable steps to avoid disclosing the identity of a discloser; or
 - the person to whom the protected disclosure was made or referred has a reasonable belief that the discloser does not object to the revelation of identity; or
 - the person to whom the protected disclosure was made or referred had a reasonable belief that it was necessary for
 - a) the investigation of the wrongdoing concerned,
 - b) to prevent serious risk to State security, public health, public safety and the environment, or
 - c) to prevent crime or the prosecution of a criminal offence crime or is warranted by the public interest;or
 - where the disclosure is otherwise necessary in the public interest or is required by law.
11. Where it is decided that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser should be informed of this decision in advance of the disclosure, except in exceptional cases and if possible obtain the discloser's consent prior to any action being taken that could identify them. Except in exceptional cases, a discloser may appeal a decision to disclose his or her identity and the discloser should be informed of this review process. The review will be organised by the Protected Disclosures Coordination Manager and will be undertaken by someone who has not been previously involved in the protected disclosures process in respect of the person at issue. There is no entitlement to two reviews in respect of the same issue.
12. Staff who are concerned that their identity is not being protected should notify the Protected Disclosures Coordination Manager who commits to assess / investigate such notifications and to take appropriate action where necessary.

13. A discloser whose identity has been compromised³ can take an action if the discloser suffers any loss by reason of such a compromised identity. The identity of the discloser must be protected. Those involved in the processing of a protected disclosure must take care that in relation to document security and filing (whether digital or manual) the discloser's identity is protected.

³ "Compromised" means where identity has not been protected in line with Section 16 of the Act and the provisions for revealing of identity contained therein.

APPENDIX 4

POLICY FOR LINE MANAGERS RECEIVING A DISCLOSURE

This Appendix provides the policy for Department of Children, Equality, Disability, Integration and Youth's staff who are disclosure recipients (e.g. line managers) for when they are approached with disclosures under this policy.

Please note that this is a summary appendix and recipients must familiarise themselves with the entire Policy and the 2014 Act.

Please note that alternative arrangements will apply in relation to the notification of and the role of the Protected Disclosures Manager as set out in this Policy if the disclosure relates specifically to the Protected Disclosures Manager or if the discloser otherwise so requests.

In accordance with Data Protection rules, in the Protected Disclosure Coordination Manager's interaction with disclosure recipients (i.e. line managers or heads of unit), the processing of personal data should be minimised, therefore, disclosure recipients should only provide information identifying the discloser or the respondent where that is strictly necessary.

Your task as the initial Recipient –

Stage 1: Preliminary screening – assessment of the disclosure to assess whether it should be treated as a protected disclosure

1. You should alert the Protected Disclosure Coordination Manager immediately upon receipt of a disclosure unless the disclosure relates specifically to the Protected Disclosures Manager or the discloser otherwise so requests in which cases alternative arrangements will apply. The Protected Disclosure Coordination Manager is there to offer you support and assistance.
2. In all cases however, if the disclosure is relevant to a particular Unit of the Department it is that unit's responsibility, (Principal Officer level) to lead this assessment of the disclosure in consultation with the Protected Disclosure Coordination Manager unless the Protected Disclosures Manager considers (at the request of the discloser or otherwise) that this is not appropriate.
3. The next step, which is very important, is to ensure there is sufficient information. It is important when a disclosure is made that there is enough information to assess whether it is a protected disclosure, and whether and how the matter can be investigated. Therefore, in the first instance, you should encourage the discloser to make their disclosure in writing using the Protected Disclosure Notification Form (Appendix 5) and giving the information required at paragraph 40 of the policy. While ideally, the discloser will use the form and make their disclosure in writing, they may make their disclosure verbally. In these circumstances, you should capture all the necessary information in a record and show the

draft record to the discloser to provide the discloser an opportunity to comment on it before finalising it. You may use the Protected Disclosure Notification Form (Appendix 5) to structure the recording of verbal disclosures.

4. You should encourage the discloser to frame the disclosure in terms of information that has come to their attention rather than seeking to draw conclusions about particular individuals or specific offences. For data protection reasons, to minimise the processing of personal data, the staff member making a protected disclosure should only reference a specific person when it is absolutely necessary to do that to make the protected disclosure (i.e. it would not otherwise be possible for the staff member to make the protected disclosure).
5. Once the information has been gathered, the assessment of whether or not the matter is a protected disclosure will be carried out by you, in consultation with the Protected Disclosures Manager.
6. If it is unclear whether information qualifies as a potential protected disclosure, the information should be treated as a protected disclosure (and protect the identity of the discloser, subject to Section 16 of the Protected Disclosures Act 2014) until satisfied that the information is not a protected disclosure.
7. It may be necessary, as part of the screening process, to differentiate between protected disclosures and personal complaints. For example, where the information provided may involve a personal complaint and a protected disclosure. In these circumstances, it may be necessary to disentangle the different elements of the complaint/disclosure and determine whether any specific disclosure of information relating to a relevant wrongdoing has taken place.
8. If required, the Protected Disclosures Coordination Manager may arrange for appropriate assistance in making any determination and assistance may be in-house or from external legal advisors, experts, consultants or other appropriate bodies/persons.
9. If following the assessment it is found that the subject matter of the disclosure is not in fact a protected disclosure, then the discloser should be advised of this. In so far as is possible, the discloser will be given reasons for the decision that the matter was not a protected disclosure and in so far as is possible will be given the opportunity to request a review of this decision.
10. If following the assessment it is found that the subject matter is a protected disclosure then the matter will move on to "Stage 2" where the disclosure is assessed to determine whether/how it can be investigated.

Pre-existing disciplinary action

11. In general where a protected disclosure is made during an investigation, disciplinary or other process, this should not affect those distinct processes, except where the investigation, disciplinary or other action represents, in essence, a form of penalisation for making a protected disclosure.

Stage 2: Assessment of the protected disclosure to determine whether it can be investigated

12. Where it is considered that the matter is a protected disclosure the next step is to consider whether the alleged wrongdoing is something that can or should be investigated or not, and, if so, what steps should be taken as part of such an investigation. While it is envisaged that protected disclosures as a general rule will be investigated, in certain occasions it may not be

appropriate to investigate the matter (e.g. if the matter is already the subject of investigation by An Garda Síochaná or the matter has already been investigated on foot of a previous protected disclosure etc.).

13. This assessment is carried out by/through the same process as outlined above. That is to say, when the disclosure is made to a line manager, by the disclosure recipient in consultation with the Protected Disclosures Coordination Manager or, if relevant and appropriate, led by the particular unit (in consultation with the Protected Disclosures Coordination Manager).
14. The Protected Disclosures Coordination Manager may arrange for appropriate assistance in making any determination and assistance may be in-house or from external legal advisors, experts, consultants or other appropriate bodies/persons.
15. The decision as to whether the matter is to be investigated or not and the reasons for this in so far as is possible will be advised to the discloser who will, in so far as possible, be given the opportunity to request a review of this decision.

Stage 3: The investigation

16. Where it is considered that an investigation is warranted in respect of a disclosure, the Protected Disclosures Coordination Manager will arrange as soon as is practicable that an investigation is commenced in line with the procedures set out at paragraphs 60-62 of the Policy.
17. Of note, the Secretary General has the ultimate authority in relation to the nature of the investigation that takes place if a decision is made to investigate the disclosure.

General Matters

The issue of confidentiality

18. The Act and the Guidance recognise that it may not always be possible to completely protect the identity of the Discloser⁴. However, you do have a responsibility to safeguard the identity of the Discloser insofar as is practically and pragmatically possible. You must also safeguard the identity of any respondent insofar as is practically and pragmatically possible. It is important to ensure that any consultation you engage in as the initial Recipient is carried out in a discreet and careful manner and that you take all reasonable steps to maintain the confidentiality of the identity of the person who approached you.
19. It is also important to note that, in accordance with the Act, a failure to comply with this requirement (see Section 16 of the Act for further detail) is actionable by the staff member who made the disclosure if he/she suffers any loss by reason of the failure to comply.

Data Protection

20. The principles of data protection will apply to the operation of this policy. This includes ensuring that there are adequate and appropriate safeguards around the protected disclosures process and minimising the processing of personal data so that only personal data that is adequate, relevant and limited to what is necessary is processed. This is particularly important in your initial engagement with the discloser where you should encourage the discloser to frame the disclosure in terms of information that has come to

⁴ While protecting the discloser's identity is paramount in some limited situations the identity of the discloser may need to be revealed as set out in Section 16 of the Act (e.g. where it is necessary for the effective investigation of the matter or in the public interest – see Section 16 for full details).

their attention rather than seeking to draw conclusions about particular individuals or specific offences and to minimise the processing of personal data unless absolutely necessary. This is also particularly important in your communications with the Protected Disclosures Coordination Manager where you should only provide information identifying the discloser or the respondent where that is strictly necessary.

Information for recipients on keeping the Discloser informed

21. A vital element in the provision of assurance is that the disclosure will be taken seriously and that communication will be open and honest. Recipients should ideally communicate the following:

- Take the time to explain your role and the role of the Protected Disclosures Coordination Manager in the process as set out in this policy document and that your initial screening does not involve a full investigation.
- Make it clear that an underlying principle of this policy is that the Discloser is not disadvantaged in any way for having made a disclosure based on a reasonable belief even if no wrongdoing is identified.
- Discuss the limits on confidentiality as set out in the legislation and the process around this as set out in the policy.
- Advise the discloser that they will have the assistance of the Employee Assistance Programme (or equivalent services) and advise them of how they can access this.
- While there is a clear necessity to draw attention to the consequences of making a protected disclosure not based on a reasonable belief, do not over emphasise this aspect as it could potentially discourage persons from making reports of wrongdoing and this outcome would be contrary to one of the main purposes of the policy which is to encourage staff to speak up about wrongdoing.
- Where you have arrived at a conclusion that the Discloser was not fully aware of all the facts or was genuinely mistaken in their belief of the occurrence or likely occurrence of wrongdoing, it is especially important to explain the basis of your finding. As a Discloser can request a review, it is important that you adequately explain matters to avoid unnecessary reviews.

Keeping the organisation informed

22. The Department's Head of Internal Audit shall be apprised by the Protected Disclosures Coordination Manager of all relevant matters. The Head of Internal Audit will also update the Department's Audit Committee periodically on disclosures and wherever possible on an anonymised basis. As a general rule, the detail given will not identify the discloser or any respondent unless necessary.

23. The Secretary General (who may brief the Management Board, the Minister and any other suitable person/body as considered appropriate) will be apprised by the Protected Disclosures Coordination Manager of all relevant matters as appropriate. As a general rule, the detail given will not identify the discloser or any respondent unless necessary. Alternative arrangements will apply if the disclosure relates specifically to the Secretary General.

24. Of note, the Secretary General has the ultimate authority in relation to the nature of the investigation that takes place if a decision is made to investigate the disclosure.

Treatment of Records

25. Head of Internal Audit (HIA), or senior member of the Internal Audit team in the absence of the HIA, shall be apprised by the Protected Disclosures Coordination Manager of the nature of each disclosure in a summarised and wherever possible anonymous/redacted format within 10 working days of receipt of the protected disclosure as well as being updated on the progression of the disclosure through the various stages and all relevant information, including reviews, complaints of penalisation and completion of the matter.

Once the assessment is made that the protected disclosure is complete (i.e. this is the responsibility of the recipient and/or Protected Disclosure Coordination Manager), all records (including the outcome) should be furnished to the Head of Internal Audit who will maintain these records securely for as long as is deemed necessary and in compliance with all data protection rules. These are to be furnished by the line manager/Head of Division, where they were the disclosure recipient or by the Protected Disclosure Coordination Manager where they were the disclosure recipient. The Protected Disclosure Coordination Manager should at all times be advised when an assessment is made that the protected disclosure is complete.

APPENDIX 5

PROTECTED DISCLOSURES NOTIFICATION FORM

Before you complete this form, you should read the attached Policy on protected disclosure reporting in the workplace carefully and ensure that the subject matter of your concern is covered by the legislation.

1. I, _____ (*name of staff member making the protected disclosure*), wish to make a disclosure under the Protection Disclosures Act 2014.
2. Grade _____
3. Place of work _____
4. Category of wrongdoing (☒ as appropriate)
 - ☐ A criminal offence
 - ☐ A failure to comply with a legal obligation (other than one arising under the staff member's contract of employment or other contract whereby the staff member undertakes to do or perform personally any work or services)
 - ☐ A miscarriage of justice
 - ☐ The endangering of an individual's health or safety
 - ☐ Damage to the environment
 - ☐ Unlawful, corrupt or otherwise improper use of public funds/resources.
 - ☐ Fraudulent activity
 - ☐ That an act, omission or course of conduct by a public official is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement
 - ☐ Concealment or destruction of evidence relating to the above.
5. Date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced:
_____/_____/_____
6. Is the alleged wrongdoing still on-going: _____

7. Has this alleged wrongdoing already been disclosed to anyone, if so, to whom, when and what action was taken:

8. Details of the protected disclosure

** where possible, identify whether there were any witnesses to the disclosed conduct (*to minimise the processing of personal data, simply indicate if there were witnesses and do not name the witnesses at this juncture)*

*** Please frame this in terms of information that has come to your attention rather than seeking to draw conclusions about particular individuals or specific offences. For data protection reasons, to minimise the processing of personal data, you should only reference a specific person when it is absolutely necessary to do that to make the protected disclosure (i.e. it would not otherwise be possible to make the protected disclosure).*

--

9. Please provide contact details⁵ at which the Recipient may contact you:

**Please include details under the heading(s) representing your preferred mode(s) of communication.*

Address	
Telephone / mobile	
Email	

10. Staff member's signature _____

Date: ____/____/____

⁵ Anonymous disclosures will be acted upon to the extent that this is possible although the ability to investigate may be constrained in the absence of the knowledge of the identity of the discloser