



An Roinn Oideachais
Department of Education

Protected Disclosures Act, 2014

Policy and Guidance for the reporting of Protected Disclosures by workers in the Department of Education

Department of Education

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These guidelines do not purport to be legal advice. If required, legal advice should be sought from the Department's legal advisors or from the Office of the Attorney General as appropriate

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1. Introduction

The purpose of this document is to set out the Department's guidance for the management of Protected Disclosures in the workplace and to outline the channels and procedures provided for reporting concerns. The Protected Disclosures Act 2014 enables workers to disclose information in relation to wrongdoing ([See Section 5 - Protected Disclosures Act 2014](#)) in the workplace by ensuring that safeguards exist should reprisals be taken against them. The Act provides for a "stepped" disclosure regime in which a number of distinct channels (internal, regulatory and external) are available.

The Protected Disclosures Act 2014 requires every public body to establish and maintain procedures for dealing with protected disclosures and to provide written information relating to these procedures to workers. This guidance document is informed by Department of Public Expenditure and Reform guidance titled "*Guidance under section 21(1) of the Protected Disclosures Act 2014 for the purpose of assisting public bodies in the performance of their functions under the Act.*"

This document should be read in conjunction with the [Protected Disclosures Act 2014](#) to which it relates.

Overall responsibility for policies and guidance pertaining to protected disclosures rests with the Management Board of the Department. Day-to-day responsibility for this guidance document is delegated to Corporate Governance.

Key principles underlying this guidance

The Department is committed to fostering an appropriate environment for addressing concerns relating to potential wrongdoing in the workplace and to providing the necessary support for workers who raise genuine concerns. It recognises the importance of developing an ethical workplace and the valuable contribution of those who raise concerns about wrongdoing. Accordingly, a worker who makes a disclosure will be protected from penalisation (or threatened penalisation), which includes suspension, lay-off or dismissal, demotion and unfair treatment. The Department is a member of the Integrity at Work Programme ("IAW"), an initiative of Transparency International Ireland. The IAW is aimed at promoting a safer working environment for people who speak up about wrongdoing.

The [IAW Pledge](#) was signed by the Secretary General and the Assistant Secretary with responsibility for the Corporate Division.

A worker who has a reasonable belief¹ that the information contained in his/her disclosure shows or tends to show that wrongdoing covered by the Act has occurred, is occurring or is likely to occur will be protected against reprisals even if the worker's concern is ultimately misguided or mistaken.

The worker can be assured that the concern will be treated seriously and investigated where it is considered appropriate. Where an investigation takes place, the identity of the worker raising the concern will be safeguarded insofar as it is practicable. The worker raising the concern will be advised on how the issue has been addressed, and will not be disadvantaged, in any way, for having made the disclosure, even if no wrongdoing is

¹ "*reasonable belief*" means that the belief is based on reasonable grounds. This does not mean that the belief has to be correct. A worker has the right to be wrong in their reasonable belief. The test applied to "*reasonable belief*" will be an objective test i.e. the disclosure will be assessed based on how a reasonable person would respond to the information available to him or her at the time that the disclosure was made.

identified, providing the concern was based on a reasonable belief. The worker will not be asked to waive their right to make a disclosure under any circumstance.

The Department will take all reasonable steps to treat disclosures made under this guidance in a confidential and sensitive manner. The Department will not disclose the worker's identity without their consent, unless it is required by law or necessary for the effective investigation of the relevant wrongdoing. Further information – Section 11 Confidentiality/protection of identity.

The Department will not tolerate any penalisation² of workers who make a report of possible wrongdoing based on a reasonable belief. Any acts of penalisation or attempted penalisation will be treated as a disciplinary matter and disciplinary sanctions will be imposed against a person who carries out any act of penalisation. Workers who experience any act of penalisation should notify the Head of Human Resources in the first instance and the notification will be examined and appropriate action taken where necessary.

2. To whom does this Guidance apply?

This guidance is applicable to all workers at or on behalf of the Department of Education and provides protections for those beyond the usual definition of employees by also including contractors, consultants, agency staff, trainees and interns. In addition this guidance applies to a disclosure made by a volunteer but it should be noted that volunteers are not included in the definition of a “worker” and therefore are not afforded the protections under the Act.

3. What is a Protected Disclosure?

A protected disclosure is a disclosure of information which in the reasonable belief of the worker tends to show one or more relevant wrongdoings. The wrongdoing must come to the worker's attention in connection with his or her employment and should be disclosed as outlined in this guidance. The Act is intended to deal with disclosures in the public interest and for connected purposes. This normally involves wrongdoings that are likely to cause harm to the Department itself or to the public at large, as opposed to personal complaints.

4. What type of disclosure is not covered by the Guidance?

The 2014 Act is intended to deal with disclosures in the public interest. This normally involves wrongdoings that are likely to cause harm to the organisation itself or to the general public, rather than to [personal complaints](#)³ or general day-to-day operational reporting.

² “**penalisation**” means any act or omission that affects a worker to the worker's detriment, and in particular includes—

- (a) suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- (e) unfair treatment,
- (f) coercion, intimidation or harassment,
- (g) discrimination, disadvantage or unfair treatment,
- (h) injury, damage or loss, and
- (i) threat of reprisal;

³ See DPER [Guidance under section 21\(1\) of the Protected Disclosures Act 2014 for the purpose of assisting public bodies in the performance of their functions under the Act](#) Section 13 “Personal Complaints vs Protected Disclosures”

Purely personal grievances and matters that are not covered by the guidance remain to be dealt with under the relevant policies or procedures.

A **grievance** is a matter specific to the worker i.e. that worker's employment position around his/her duties, terms and conditions of employment, working procedures or working conditions and should be processed under the Department's HR procedures.

A **protected disclosure** is where a worker has information about a relevant wrongdoing.

Examples of a grievance

- Complaint around selection criteria for a promotional post;
- Complaint around allocation of overtime.

Examples of a protected disclosure

- In a hazardous work situation, information regarding a failure to provide or wear protective clothing and adhere to health and safety guidelines;
- Information about the improper use of funds, bribery and fraud.

Accordingly, this guidance document should also be read in conjunction with the following documents (links attached) to ensure that the issue being reported on does not fall within an existing code of practice or that it should be dealt with under another process, such as a grievance or through other recourse mechanisms:

- Grievance procedure [Grievance](#)
- Civil Service Disciplinary Code revised in accordance with the Civil Service Regulation (Amendment) Act 2005 [19/2016:- Civil Service Disciplinary Code revised in accordance with the Civil Service](#)
- [Civil Service Code of Standards and Behaviour](#)
- [Circular 09/2009: Civil Servants and Political Activity Conduct](#)
- [Information Security Policy](#)
- [Protection of Personal Data Code of Practice](#)
- ["Dignity at Work" an anti-bullying, harassment and sexual harassment policy](#)
- [Guidelines on compliance with the provision of the Ethics in Public Office Acts 1995 and 2001 http://www.sipo.gov.ie/en/Guidelines/Guidelines-for-Public-Servants/](#)
- [Industrial Relations Act 1990 \(Code of Practice on Protected Disclosures Act 2014\) \(Declaration\) Order 2015.](#)

In addition, it should be noted that this Guidance

- does not cover disclosures of wrongdoing if the matter is one which it is the function of the worker to detect, investigate or prosecute
- does not cover a disclosure of information obtained by unlawful or improper means, e.g. unlawful or improper access to computer systems or databases
- is not a replacement for existing mandatory reporting schemes and
- does not cover a disclosure where the worker knowingly conveys false, misleading, frivolous or vexatious information. If it transpires that a worker makes a disclosure, which they know to be false or do not believe to be true, the Department will take disciplinary or other appropriate action.

5. What type of disclosure is covered by the Guidance?

A disclosure of [relevant information](#) made by a worker in the reasonable belief that one or more of the following types of wrongdoing has occurred, is occurring or is likely to occur is covered by the guidance [See Section 5 - Protected Disclosures Act 2014](#). In particular that:

- an offence has been, is being or is likely to be committed
- a person has failed, is failing or is likely to fail to comply with any legal obligation, 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
- a miscarriage of justice has occurred, is occurring or is likely to occur
- the health or safety of any individual has been, is being or is likely to be endangered
- the environment has been, is being or is likely to be damaged
- an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur
- an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or
- information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed.

The motivation of the worker for making a disclosure is irrelevant when determining whether or not it is a disclosure protected by the 2014 Act. All disclosures will be dealt with regardless of the worker's motivation for making the disclosure, and the worker will be protected so long as the worker reasonably believes that the information disclosed tended to show a wrongdoing.

6. Making a disclosure in the Department

A worker should make a disclosure at the earliest possible time if in their reasonable belief, any of the wrongdoings outlined in Section 5 above has occurred, is occurring or is likely to occur or there has been a breach of Civil Service policy such that harm may be arising to the public or to the Department. Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so.

This information must:

- have come to the worker's attention in connection with the worker's employment; and
- the worker must have a reasonable belief that the information disclosed shows a relevant wrongdoing.

7. Who can a worker speak to?

A worker is protected from penalisation if he/she makes a disclosure in the context 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).

If a barrister or solicitor subsequently discloses information which was the subject matter of a disclosure to him/her, he/she will not be protected by the 2014 Act. A trade union official or an official of an excepted body will however be able to avail of the protections of the 2014 Act.

Before making a disclosure a worker may wish to obtain advice or guidance.

The Department of Education is a member of the Integrity at Work programme, a Transparency International (TI) Ireland initiative. Independent and confidential advice for anyone considering reporting a concern or making a protected disclosure is available via TI Ireland's Speak Up Helpline at 1800 844 866, Monday to Friday 10am to 6pm. The email address is helpline@transparency.ie or visit www.speakup.ie. Where appropriate, the helpline can refer callers to access free legal advice from the Transparency Legal Advice Centre (see <https://www.transparency.ie/helpline/TLAC>)

A guide to making a Protected Disclosure is also available at https://transparency.ie/sites/default/files/14.12.02_speak_up_safely_final.pdf

8. Making a protected disclosure within the Department

A worker should make a disclosure at the earliest possible time if in their reasonable belief, any of the wrongdoings outlined in Section 5 above has occurred, is occurring or is likely to occur or there has been a breach of Civil Service policy such that harm may be arising to the public or to the Department. Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so.

This information must:

- have come to the worker's attention in connection with the worker's employment; and
- the worker must have a reasonable belief that the information disclosed shows a relevant wrongdoing.

9. To Whom to Report:

Note: Corporate Governance provide a reference number and record and track disclosures in respect of dates and outcome only, no records or details will be provided to Corporate Governance.

Any worker who has a reasonable belief in relation to one or more of the serious wrongdoings set out in Section 5 above should disclose the relevant information to either (a), (b), (c) or (d) below:

(note: the person receiving a disclosure is titled the "recipient".)

- a) Discloser at Grade below AP**
AP
HEO/EO
- b) Discloser at Grade below PO**
PO/PO equivalent in your area of work.
If the disclosure involves the PO/PO equivalent you can make the disclosure to the Head of Division
- c) Discloser at Grade PO/PO equivalent**
Head of Division in your area of work.
If the disclosure involves the Head of Division you can make the disclosure to the Secretary General
- d) Discloser at Head of Division**

Secretary General

In addition, a discloser may make a disclosure to the Head of Internal Audit if he/she is unable/unwilling to disclose through their line management. In this instance, the Head of Internal Audit will provide information on the disclosure to the Review Group who will assign an official/other to act as the recipient.

In all cases, if appropriate, the Head of Internal Audit will be notified of the contents of the disclosure, and the outcome of any screening/investigation. In addition, the Secretary General will be notified of the commencement of an investigation and of the outcome.

While it is anticipated that disclosures will be made within the Department, the Act recognises that in certain circumstances this may be inappropriate or impossible. The legislation provides for five avenues of disclosure:

- to an employer or other responsible person;
- to a prescribed person; as set out in Statutory Instrument [SI 367/2020](#). This is a formally designated person that can receive a report in respect of matters in their sphere of responsibility
 - Chief Executive Officer of the State Examinations Commission
 - Director of the Teaching Council
- to a Minister;
- to a legal adviser; or
- to a third party in other cases

For further information on making a disclosure outside of the Department see Appendix B.

Guidance on how to make a disclosure: Appendix A

Guidance for senior officers on receiving a disclosure: Appendix C

Guidance for senior officers on investigating a Disclosure: Appendix E

10. Role of the Review Group

The Department's guidance includes the establishment of a Review Group. The Review Group will comprise an Assistant Secretary and a senior Legal Services officer and may include other relevant officials. Their role is to:

- (a) Review, on request of the discloser, a screening decision not to proceed with a disclosure to investigation.⁴
- (b) Assign an official or an alternative official to investigate the disclosure, as appropriate.
- (c) Review, on request, the investigation process in the event that the discloser is not satisfied with the decision of the investigation.

⁴ Advise the recipient generally within 10 working days (and no later than 16 working days) of the outcome of the review which will be either (a) or (b) below.

(a) Agreeing with the decision of the recipient not to proceed to investigation

(b) Disagreeing with the decision of the recipient and, either referring the disclosure back to the recipient to carry out an investigation or, if appropriate, nominate a new investigating officer.

A decision of the Review Group not to pursue the matter will represent a final internal outcome on the matter.

- (d) Monitor progress on the implementation of recommendations of a report's findings (if any).
- (e) Review a proposal to disclose the identity of a discloser without his/her permission in advance of the identity being disclosed (except in exceptional cases).
- (f) Review a proposal to have a disclosure investigated externally using the OGP Protected Disclosures framework.
- (g) Review the outcome of any assessment/investigation in respect of any complaint of penalisation.
- (h) Notify the Head of Internal Audit of the outcomes of reviews carried out by the Review Group.
- (i) Communicate any decisions taken in writing to discloser/recipient and a copy of all decisions will be retained by the Secretary to the Group.

Review Group Terms of Reference: Appendix D

11. Role of the Head of Internal Audit

The role of the Head of Internal Audit is to:

- (a) maintain records of all disclosures
- (b) notify the Secretary General on receipt of disclosures which are the subject of an investigation and on the outcome including report recommendations (if any).
- (c) report to the Secretary General and the Audit Committee, details of all disclosures brought to his/her attention and their findings.
- (d) monitor the implementation of the recommendations that have been formulated as a consequence of a report.
- (e) liaise with the Review Group to arrange for the nomination of a recipient as required.
- (f) provide a summary report on all protected disclosures which will be included in the Department's Annual Report as required under [Section 22 of the Protected Disclosures Act 2014](#)

12. Role of Corporate Governance

The role of the Corporate Governance is to:

- (a) record and track disclosures.
- (b) provide secretarial assistance to the Review Group as required.

13. Role of Head of Human Resources

The role of the Head of Human Resources is to:

- (a) investigate any instances of penalisation reported by a worker.
- (b) decide on the disciplinary action required where it is established that a worker knowingly made a false, misleading, frivolous or vexatious disclosure.
- (c) provide information on investigation procedures.

14. Anonymous disclosures

There is a distinction between an anonymous disclosure (where identity is withheld by the discloser) and confidential disclosures (where identity is protected by the recipient).

A worker may make an anonymous disclosure if they wish to do so. A disclosure is considered anonymous if:

- the identity of the discloser is not revealed and if no contact details for the discloser are provided or
- the discloser does not disclose their name but does provide contact details.

Anonymous disclosures will be acted upon to the extent that this is possible given the constraints in obtaining further information on the alleged wrongdoing.

While affording full and proper consideration to an anonymous disclosure, it should be noted that the protections available under the Act and important elements of this protected disclosure guidance document (e.g. keeping the discloser informed), cannot in such circumstances be accessed by a worker who makes an anonymous disclosure unless the worker is prepared to dispense with anonymity. In addition, it should be noted that a worker cannot obtain redress under the 2014 Act without identifying themselves.

15. Disclosures by volunteers

A volunteer may make a disclosure if they wish to do so. Such disclosures will be appropriately assessed and / or investigated. While affording full and proper consideration to the disclosure, it should be noted that volunteers are not included in the definition of a “worker” and therefore are not afforded the protections under the Act.

16. Confidentiality/protection of identity.

The 2014 Act provides that a recipient must not disclose to another person any information that might identify the discloser, except where:

The recipient shows that he/she took all reasonable steps to avoid such disclosure

- (a) The recipient has a reasonable belief that the discloser did not object to their identity being disclosed
- (b) The recipient had a reasonable belief that it was necessary:
 - (i) for the investigation of the wrongdoing concerned,
 - (ii) to prevent serious risk to the security of the State, public health, public safety or the environment, or
 - (iii) for the prevention of crime or prosecution of a criminal offence; or
- (c) that the disclosure is otherwise necessary in the public interest or is required by law.

Where a decision is taken that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser will be consulted, and where possible, the recipient will gain the informed consent of the discloser, prior to any action being taken that could identify them. In any event the discloser will be informed of any decision to disclose in advance except in exceptional cases.

+The discloser may seek a review of this decision by the Review Group.

17. What Protections are offered to those who make disclosures?

The Act sets out protections and prohibits penalisation of workers who make a disclosure. A worker could be awarded compensation of up to five years remuneration if unfairly dismissed. See [Part 3 Protected Disclosures Act, 2014](#). However, a worker who knowingly makes a false or misleading disclosure will not receive protections under the Protected Disclosures Act 2014.

The Department will protect workers who raise concerns against penalisation by investigating all claims of such penalisation and taking appropriate action against those who perpetrate them. The Department will investigate and take appropriate disciplinary action against any worker:

- who penalises or seeks to penalise a worker who has made what is being treated as a protected a disclosure, whether it is deemed a protected disclosure or not
- who is found to be unnecessarily or inappropriately endeavouring to identify a worker who makes a disclosure under the legislation
- who, except in circumstances permitted by [section 16\(2\)](#) of the Protected Disclosures Act 2014, discloses details that could establish the identity of a worker who has made what is being treated as a protected disclosure.

Workers can be assured that all reasonable steps will be taken to protect them from penalisation for having made a disclosure and any worker having made a report of wrongdoing that experiences any act of penalisation should inform the Head of Human Resources. Incidents of reprisal against a worker making a report under this guidance may be subject to action under [the Civil Service Disciplinary Code](#)

A worker who is considering making a disclosure should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing.

18. Protection of the person against whom an allegation of wrongdoing has been made (i.e. the Respondent).

Where an allegation is made against an individual (the “Respondent”), the principals of natural justice and fair procedures will be invoked. This may include a right to challenge the evidence against him/her. While an investigation is on-going, all reasonable steps should be taken to protect the confidentiality of those who are the subject of allegations in a disclosure pending the outcome of the investigation. Where it is necessary to interview the respondent during the course of the investigation, he/she should be advised that they are entitled to be accompanied by a colleague or staff representative etc., should they so wish.

The Respondent should be included in the investigation process and made aware of the details of any allegation against him/her in so far as is possible having regard to the requirements of confidentiality contained in the Act and will be given the opportunity, as part of a full investigation, to put forward their case in response to the allegation(s).

19. Records

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.

Records of protected disclosures raised, including the outcome, should be maintained for a minimum of seven years after the closure of the case by the Head of Internal Audit. These

records should be maintained in a confidential and secure form that that does not endanger the confidentiality of the person making the disclosure or damage reputations

The Protected Disclosures Act 2014 can be downloaded at:

<http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/acts/2014/a1414.pdf>

Appendix A: How to make a disclosure

What should a disclosure include?

A disclosure under this guidance should preferably be made in writing to ensure that all the relevant information is made available at the time the disclosure is made. A protected disclosures notification form is attached at Appendix F Protected Disclosures Notification Form. The Information contained in the disclosure should:

- (i) include your name, grade, place of work, date of disclosure and your preferred contact details
- (ii) be clear and factual
- (iii) so far as possible, avoid speculation, personal attacks and emotive language
- (iv) contain supporting evidence where that is available to the discloser including
 - the name of the person(s) (if known or applicable) allegedly involved in the alleged wrongdoing
 - the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified
 - whether or not the alleged wrongdoing is still ongoing
 - whether the alleged wrongdoing has already been disclosed to any member of management and if so when and to what effect
 - the details of the alleged wrongdoing and any supporting information and
 - where possible, identify any witnesses to the disclosed conduct.

The disclosure should be of sufficient detail that a person without prior knowledge would understand the issue.

You are also advised to state that the disclosure is made under the Protected Disclosures Act and state if you do / do not expect confidentiality. **[Note:** The Act and the Guidance recognise that it may not always be possible to completely protect the identity of the discloser. The recipient does however have a responsibility to safeguard your identity insofar as is practically and pragmatically possible. [See Section 12. Confidentiality/protection of identity.]

There is no required format for the making of a disclosure. A disclosure can be made:

- (i) anonymously **[Note:** Anonymous disclosures will be acted upon to the extent that this is possible given the constraints in obtaining further information on the alleged wrongdoing.]
- (ii) electronically, verbally or in writing **[Note:** When a disclosure is made verbally, it will be documented by the recipient and agreed with the discloser.]

What happens after you make a disclosure?

When a disclosure of alleged wrongdoing is made, an initial screening process involving an assessment is undertaken by the recipient. The screening process will involve an assessment of the disclosure to seek to determine whether or not it should be treated as a potentially protected disclosure. The assessment will consider whether the alleged wrongdoing is serious or minor, whether it is something that can be investigated or not, and if it can be investigated, what steps should be taken as part of such an investigation. You will be provided with feedback by the recipient in relation to the matters disclosed and be advised when consideration of the disclosure is complete, except in exceptional cases.

If you are not satisfied with the outcome at the initial screening or investigation stage you will have the option of requesting a review by the Review Group see below.

Information and feedback will be provided in confidence, however, the recipient is not obliged to inform you of the progress, or outcome, of any disciplinary process involving another worker. In general, such information is confidential between the employer and the worker disciplined.

You should seek legal advice before and after making a disclosure. You can seek independent advice at any time on dealing with penalisation or a failure to adequately respond to the making of a disclosure.

Decision not to proceed to investigation:

It should be noted that there is no specific provision for investigations and/or actions to be undertaken under the Protected Disclosures legislation. Where investigations and/or actions are warranted they will be conducted under the appropriate existing policy or procedure, where such exists.

You will be advised by the recipient of the basis for this decision. If you are dissatisfied with a decision of the recipient not to pursue the matter further you may request a review of the initial screening decision by the Review Group (via the recipient) within 10 working days⁵ of having received the decision.

Review Group:

A review of the initial screening decision will be undertaken by the Review Group who will notify the Head of Internal Audit of the review request and the outcome of that review. Corporate Governance will provide secretarial assistance as required to the Review Group.

You will be advised generally within 10 working days (and no later than 16 working days) by the recipient of the outcome of the review which will be either (a) or (b) below.

- (a) Agreeing with the decision of the recipient not to proceed to investigation
- (b) Disagreeing with the decision of the recipient and, either referring the disclosure back to the recipient to carry out an investigation or, if appropriate, nominate a new investigating officer.

Decision to proceed to investigation:

You will be advised by the recipient of the basis for his/her decision in respect of the screening and you will be advised of his/her role in the investigation. You will be updated on the progress and outcome of the investigation as appropriate having regard to the nature of the matters investigated. It is not possible to lay down precise timescales or steps required for investigations, as this will depend on the nature of the issues raised however, the recipient will advise you of progress and the investigation will be brought to a conclusion as speedily as possible.

In the event that you are dissatisfied with the decision following the investigation, it is open to you to request the recipient to have the investigation process examined by the Review Group within 10 working days of having received that decision. Please note that this will **not** be a re-investigation of the disclosure but an examination of the investigation process. The outcome of this investigation will represent a final internal examination of the matter.

⁵ Timeframes are not mandatory and are dependent on the contents of the disclosure

As it is not possible to know at the time whether a disclosure will subsequently be deemed protected under the Protected Disclosures Act the recipient should keep a written record of his/her actions, including timelines.

It is important to note that some matters may be of such seriousness that the investigation will have to be carried out professionally, such as by subject matter experts or may need to be reported to and investigated by An Garda Síochána, if this is the case the discloser will be informed accordingly.

Note: Corporate Governance provide a reference number and record and track disclosures in respect of dates and outcome only, no records or details will be provided to Corporate Governance.

Appendix B: Making a Protected Disclosure outside of the Department

[See Section 6 – 10 – Protected Disclosures Act 2014](#)

Disclosure to employer or other responsible person

6. (1) A disclosure is made in the manner specified in this section if the worker makes it—
- (a) to the worker's employer, or
 - (b) where the worker reasonably believes that the relevant wrongdoing which the disclosure tends to show relates solely or mainly—
 - (i) to the conduct of a person other than the worker's employer, or
 - (ii) to something for which a person other than the worker's employer has legal responsibility, to that other person.
- (2) A worker who, in accordance with a procedure the use of which by the worker is authorised by the worker's employer, makes a disclosure to a person other than the employer is to be treated for the purposes of this Act as making the disclosure to the employer.

Disclosure to prescribed person

7. (1) A disclosure is made in the manner specified in this section if the worker—
- (a) makes the disclosure to a person prescribed under *subsection (2) (a)*, and
 - (b) reasonably believes—
 - (i) that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under *subsection (2) (b)*, and
 - (ii) that the information disclosed, and any allegation contained in it, are substantially true.
- (2) The Minister may by order—
- (a) 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
 - (b) 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.
- (3) Every order under *subsection (2)* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done under the order.

Disclosure to Minister

8. A disclosure is made in the manner specified in this section if—
- (a) the worker is or was employed in a public body, and
 - (b) the disclosure is made to a Minister of the Government on whom any function relating to the public body is conferred or imposed by or under any enactment.

Disclosure to legal adviser

9. A disclosure is made in the manner specified in this section if it is made by the worker in the course of obtaining legal advice (including advice relating to the operation of this Act) from a barrister, solicitor, trade union official or official of an excepted body (within the meaning of [section 6](#) of the [Trade Union Act 1941](#)).

Disclosure in other cases

10. (1) A disclosure is made in the manner specified in this section if it is made otherwise than in the manner specified in sections 6 to 9 and—
- (a) the worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
 - (b) the disclosure is not made for personal gain,
 - (c) any one or more of the conditions in *subsection (2)* is met, and
 - (d) in all the circumstances of the case, it is reasonable for the worker to make the disclosure.
- (2) The conditions referred to in *subsection (1)(c)* are—
- (a) that, at the time the worker makes the disclosure, the worker reasonably believes that the worker will be subjected to penalisation by the worker's employer if the worker makes a disclosure in the manner specified in section 6, 7 or 8,
 - (b) that, in a case where no relevant person is prescribed for the purposes of section 7 in relation to the relevant wrongdoing, the worker reasonably believes that it is likely that evidence relating to the relevant wrongdoing will be concealed or destroyed if the worker makes a disclosure in the manner specified in section 6,
 - (c) that the worker has previously made a disclosure of substantially the same information—
 - (i) in the manner specified in section 6, or
 - (ii) in the manner specified in section 7 or 8,and
 - (d) that the relevant wrongdoing is of an exceptionally serious nature.
- (3) In determining for the purposes of *subsection (1)(d)* whether it is reasonable for the worker to make the disclosure regard shall be had, in particular, to—
- (a) the identity of the person to whom the disclosure is made,
 - (b) in a case falling within *subsection (2) (a), (b) or (c)*, the seriousness of the relevant wrongdoing,
 - (c) in a case falling within *subsection (2)(a), (b) or (c)*, whether the relevant wrongdoing is continuing or is likely to occur in the future,
 - (d) in a case falling within *subsection (2)(c)*, any action which the employer of the worker or the person to whom the previous disclosure was made has taken or might reasonably be expected to have taken as a result of the previous disclosure, and
 - (e) in a case falling within *subsection (2)(c)(i)*, whether in making the disclosure to the employer the worker complied with any procedure the use of which by the worker was authorised by the employer.
- (4) For the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in *subsection (2)(c)* even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.
- (5) In *subsection (1)(b)* "personal gain" excludes any reward payable under or by virtue of any enactment.

Appendix C: Guidance for Receiving a Disclosure

This Appendix provides guidance for senior officers in the Department who are approached with disclosures alleging serious wrongdoing. The main purpose of the Protected Disclosures Act 2014 ('the Act') is to encourage workers to report relevant wrongdoing and to protect them from penalisation by their employer for having made a disclosure in accordance with its provisions. The Department's Information and Guidance on Protected Disclosures in the Workplace ('the Guidance') reflects the provisions and intent of the legislation.

Your task as the initial recipient – preliminary screening

In the first instance, Corporate Governance must be informed of the receipt of a potential protected disclosure. The Head of Internal Audit should be advised, in writing, of the receipt of the disclosure, the nature of the information contained in the disclosure and the final decision transmitted to the discloser of the screening process.

An initial screening process involving an assessment of the disclosure should be undertaken by the recipient to determine whether or not it should be treated as a protected disclosure. If it is unclear whether information qualifies as a potentially protected disclosure, the information should be treated as a protected disclosure (and protect the identity of the discloser, subject to Section 12) until satisfied that the information is not a protected disclosure. Consider passing to a colleague for assessment in the event of a conflict of interest.

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.

If following the assessment it is found that no further investigation is required, the discloser should be advised by the recipient of the basis for this assessment, insofar as possible and advised of their right to ask for a review by the Review Group outlining the reasons as to why he/she feels that the matter requires investigation. If found that an investigation is required, in most but not all cases, the official who carried out the preliminary screening will be the official who carries out the investigation.

In exceptional circumstances, it may be necessary to request an alternative senior manager or external third party to investigate the disclosure, subject to the agreement of the Review Group.

Pre-existing disciplinary action

Where a worker, who is the subject to some pre-existing or expected disciplinary issue, makes a report of wrongdoing the disclosure will be given full and proper consideration consistent with that set out in this guidance document and the legislation.

Consideration will be proportionate in light of the circumstances in which it is raised. As far as is possible in all the circumstances of the case, the information disclosed will be separated from the worker making the disclosure to seek to remove the risk that the report will not be properly assessed by the Department, on account of a belief that it is being made to safeguard the worker from redundancy or disciplinary action.

The worker will not benefit from protection under the protected disclosure procedures solely by virtue of having made a disclosure of relevant wrongdoing and would remain subject to the pre-existing disciplinary issue.

The issue of confidentiality

The Act and the Guidance recognise that it may not always be possible to completely protect the identity of the discloser. You do however have a responsibility to safeguard the identity of the discloser insofar as is practically and pragmatically possible and you should not disclose the name when reporting to Corporate Governance, Review Group etc. 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.

It is also important to note that, in accordance with the Act, a failure to comply with this requirement is actionable by the worker who made the disclosure if he/she suffers any loss by reason of the failure to comply.

Keeping the discloser informed

A vital element in the provision of assurance that the disclosure will be taken seriously is open and honest communication.

You should take the time to explain your role in the process as set out in the Guidance and that your initial screening does not involve a full investigation. You should also make it clear that an underlying principle of the Guidance 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. This would also be an appropriate time to discuss the limits on confidentiality as set out in the legislation.

While there is a clear necessity to draw attention to the consequences of making a protected disclosure not based on a reasonable belief, an over emphasis on this aspect could potentially discourage persons from making reports of wrongdoing. Such an outcome would be contrary to one of the main purposes of the Guidance 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 by the Review Group, it is important that you adequately explain matters to avoid unnecessary reviews.

Keeping the organisation informed

The Guidance requires that you formally advise others in the organisation of the fact that a disclosure of wrongdoing has been brought to your attention.

A checklist has been prepared for your guidance, you should maintain a copy of this checklist for your records. As there are no time limits set out in the Act or the Guidance, it is important that you maintain your records until such time as you are satisfied that all matters connected with the disclosure have been disposed of after which all records should be transferred to the Head of Internal Audit.

Initial recipient of a disclosure – checklist

Name:

Date:

1.	Have you read and familiarised yourself with the content of the Department's Guidance on Protected Disclosures in the Workplace?	<input type="checkbox"/>
2.	Have you taken particular note relating to your responsibilities concerning the avoidance of the disclosure of information that might identify the person by whom the disclosure was made?	<input type="checkbox"/>
3.	Have you given a copy of this Guidance to the discloser and advised them that their concerns will be treated seriously?	<input type="checkbox"/>
4.	Has the Discloser adequately demonstrated to you that the matters he/she is raising fall into one of the categories set out in number 5. What type of disclosure is covered by the Guidance?	<input type="checkbox"/>
5.	If the answer to question number 4 is 'NO' have you advised the discloser that the subject matter of the disclosure must refer to one of the matters set out at number 5.' What type of disclosure is covered by the Guidance'?	<input type="checkbox"/>
6.	If the answer to question number 4 is 'YES' have you advised the discloser that you will carry out an initial screening and revert with an indication as to whether, in your view, the matter requires a formal investigation?	<input type="checkbox"/>
7.	Have you explained the difference between an initial screening and a full investigation?	<input type="checkbox"/>
8.	Have you explained that in the event of a conclusion that an investigation is required the matter will be investigated and that this may be referred to another officer for investigation if it is considered more appropriate?	<input type="checkbox"/>
9.	Have you explained to the discloser the limits on confidentiality as set out in the Protected Disclosures legislation?	<input type="checkbox"/>
10.	Where practicable, if it is a verbal disclosure has the discloser confirmed the information provided, and noted by you is correct?	<input type="checkbox"/>
11.	Have you informed the discloser in advance of a decision if it is necessary to disclose information that may or will disclose their identity you will afford them the option of having that decision reviewed by the Review Group?	<input type="checkbox"/>
12.	Have you provided the discloser with periodic feedback in relation to the matters disclosed?	<input type="checkbox"/>
13.	In the event that you have arrived at the view that an investigation is not appropriate have you advised the discloser, in so far as is possible, the basis for arriving at that conclusion?	<input type="checkbox"/>
14.	Have you explained to the discloser that if he/she is not happy with a decision not to pursue the matter further you can refer the matter to a Review Group who will review that decision?	<input type="checkbox"/>
15.	Have you provided Corporate Governance the following information 1. Date disclosure received 2. Recipient Name 3. Category of disclosure and requested a Ref No. and having carried out the screening the outcome of that screening?	<input type="checkbox"/>
16.	Have you formally advised the Head of Internal Audit of the receipt of the disclosure, the nature of the information contained therein and the outcome of your screening?	<input type="checkbox"/>
17.	If the Review Group forms the view that it is more appropriate for another officer to carry out the investigation, have you passed all relevant papers to that new recipient and informed the discloser of the contact details of the new recipient?	<input type="checkbox"/>

Appendix D: Review Group Terms of Reference

Protected Disclosures Review Group Terms of Reference

1: Introduction

The Protected Disclosures Review Group supports the development of a consistent approach to the management of protected disclosure applications in the Department. The Review Group has a largely consultative and advisory brief and its role is to provide support, advice and guidance to officers who may be encountering difficulty in the management of a disclosure. In addition, the Group will review recipients' decisions/proposals.

The responsibility for progressing the protected disclosure remains with the relevant official (recipient).

2: Membership

(a) Standing members:

Chairperson: Assistant Secretary, Corporate Division
Principal Officer, Corporate Services
Legal Advisor, Legal Services
Secretary, Corporate Services

(b) Additional members

Assistant Secretary and Principal Officer with responsibility for the area to which the protected disclosure pertains.

The Chairperson can invite other officials with relevant experience to attend meetings.

Under the Protected Disclosures Act 2014, disclosures can be made to the following:

- **an employer or other responsible person (section 6)**
- a prescribed person (section 7)
- **a Minister (section 8)**
- other cases (section 10)

The Review Group's role is in respect of Section 6 and Section 8

3: Role of the Review Group

The Review Group has a largely a consultative and advisory brief and its role is to provide support, advice and guidance to officers who may be encountering difficulty in the management of a disclosure. In addition, the Group will review recipients' decisions/proposals as outlined below.

(a) Section 6 - Protected Disclosures Act, 2014 - **Disclosure to employer**

'The worker is required to make the disclosure pursuant to the Act to his/her employer, or, where he/she reasonably believes that the relevant wrongdoing to which the disclosure relates arises solely or mainly from the conduct of a person other than his/her employer, or to something for which a person other than the worker's employer has legal responsibility, the disclosure should be made to that other person'.

In respect of a Section 6 disclosure, the Review Group will:

- (a) Review, on request of the discloser, a screening decision not to proceed with a disclosure to investigation.¹
- (b) Assign an official or an alternative official to investigate the disclosure, as appropriate.
- (c) Review, on request, the investigation process in the event that the discloser is not satisfied with the decision of the investigation.
- (d) Monitor progress on the implementation of recommendations of a report's findings (if any).
- (e) Review a proposal to disclose the identity of a discloser without his/her permission in advance of the identity being disclosed (except in exceptional cases).
- (f) Review a proposal to have a disclosure investigated externally using the OGP Protected Disclosures framework.
- (g) Review the outcome of any assessment/investigation in respect of any complaint of penalisation.
- (h) Notify the Head of Internal Audit of the outcomes of reviews carried out by the Review Group.
- (i) Communicate any decisions taken in writing to discloser/recipient and a copy of all decisions will be retained by the Secretary to the Group.

(b) Section 8 - Protected Disclosures Act, 2014 - **Disclosure to Minister**

'A worker employed in a public body may make a protected disclosure to the Minister rather than to their employer who has a function in respect of the public body concerned.'

A Protected Disclosure can be made under Section 8 if

- The worker is or was employed in the public body, **and**
- The disclosure is made to a Government Minister who has functions under legislation in respect of that body.

Both of the criteria above must be satisfied in addition to the other tests under the Act.

In respect of a Section 8 disclosure the Review Group will:

- (a) Review a proposal to disclose the identity of a discloser without his/her permission in advance of the identity being disclosed, except in exceptional circumstances. (The official (recipient) must also advise the Minister and Secretary General, in advance of disclosing this information).
- (b) Determine the PO area to lead on a disclosure, if the disclosure spans a number of areas.
- (c) Review a proposal to have a disclosure investigated externally. (The official must also seek the Minister's agreement to assign an external investigator from the OGP Protected Disclosures framework).
- (d) If the disclosure is made against a senior staff member e.g. CEO of an aegis body/organisation, the Review Group must be consulted.

¹ Advise the recipient generally within 10 working days (and no later than 16 working days) of the outcome of the review which will be either (a) or (b) below.

(a) Agreeing with the decision of the recipient not to proceed to investigation

(b) Disagreeing with the decision of the recipient and, either referring the disclosure back to the recipient to carry out an investigation or, if appropriate, nominate a new investigating officer.

A decision of the Review Group not to pursue the matter will represent a final internal outcome on the matter.

(e) Communicate any decisions taken in writing to discloser/recipient and a copy of all decisions will be retained by the Secretary to the Group

Appendix E: Guidance for investigation of Disclosures

This Appendix provides guidance for senior officers in the Department who are responsible for investigating alleged serious wrongdoing under the Protected Disclosures Act 2014 ('the Act'). The Act provides protection for workers from penalisation by their employer for having made a disclosure in accordance with its provisions. The Department's Information and Guidance on Protected Disclosures in the Workplace ('the Guidance') reflects the provisions and intent of the legislation.

Your task as the recipient carrying out the investigation

The initiation of an investigation must be reported to the Head of Internal Audit, the Review Group and Corporate Governance by the recipient within 3 working days. The Head of Internal Audit will inform the Secretary General of the decision to investigate.

The manner in which you conduct your investigation is one for determination by you having regard to the particular circumstances of the case. This is however subject to two very important considerations:

- *The issue of confidentiality* - please refer to page 8 above.
- *Fair investigatory procedures* – Investigation arising as a consequence of a disclosure must, as with all other internal investigations, be carried out in a manner which is fully consistent with existing investigatory procedures. Remember that in addition to your responsibility to the discloser you also have a responsibility to ensure that accusations of wrongdoing, which could potentially prove to be incorrect, are not made against innocent persons.

Should you require any particular guidance in relation to procedures you should seek advice from the Head of Human Resources.

Keeping the discloser informed

You should take the time to explain your role in the process as set out in the Guidance and the nature of the investigation you will undertake. You should also make it clear that an underlying principle of the Guidance 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. This would also be an appropriate time to discuss the limits on confidentiality as set out in the legislation.

While there is a clear necessity to draw attention to the consequences of making a disclosure not based on a reasonable belief, an over emphasis on this aspect could potentially discourage persons from making reports of wrongdoing. Such an outcome would be contrary to one of the main purposes of the Guidance which is to encourage staff to speak up about wrongdoing.

If your investigation is taking some time you should provide the discloser, in so far as is possible and appropriate, with an update of progress.

Upon completion of your investigation

You are required under this guidance to advise the discloser, the Head of Internal Audit Unit and the Review Group of the outcome of your investigation.

In the event that the discloser is not satisfied with a decision of the investigation you should advise the discloser that it is open to him/her to request you to have the investigation process examined by the Review Group within 10 working days of having received the decision.

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 to the discloser.

In a case where you have arrived at a conclusion that the discloser did not make his/her disclosure based on a reasonable belief –i.e. the disclosure was made for frivolous or vexatious reasons, you should advise the Review Group who may consult with the Head of Human Resources to consider whether disciplinary proceedings ought to be pursued against the person concerned.

The making of a disclosure and subsequent investigation is a serious matter. You should carefully record all of the steps you have taken during the course of your discussions with the discloser and during the course of your investigation. A checklist has been prepared for your guidance, you should maintain a copy of this checklist for your records. As there are no time limits set out in the legislation or the Guidance it is important that you maintain your records until such time as all matters connected with the disclosure have been disposed of to your satisfaction after which they should be transferred to the Head of Internal Audit.

Outcome of investigation

Your report of findings should be sent to the Review Group containing the following information:

- a description of the disclosure and the findings of the investigation
- the effect the disclosure had on the Department, if any
- the means of perpetrating the malpractice or impropriety and if appropriate
- recommendation of necessary measures to prevent a recurrence;
- an action plan to implement these recommendations
- the action required to strengthen future responses under this guidance
- a conclusion as to the way forward and
- any other relevant material.

The recipient will forward a copy of the report to the Review Group setting out the appropriate means by which the report's findings/ recommendations are to be implemented. The report including the implementation plan (if any) will be transmitted to the Head of the Internal Audit Unit who will monitor its implementation as appropriate. The Head of Internal Audit Unit will forward a copy of the final report including an implementation, plan if any, to the Secretary General.

Investigation of a disclosure – checklist

Name:

Date:

- | | | |
|-----|--|--------------------------|
| 1. | Have you read and familiarised yourself with the content of the Department's Guidance on Protected Disclosures in the Workplace? | <input type="checkbox"/> |
| 2. | Have you discussed with the Review Group, if appropriate, whether you should continue with the investigation or the investigation is more appropriate to another Officer? | <input type="checkbox"/> |
| 3. | Have you taken particular note relating to your responsibilities concerning the avoidance of the disclosure of information that might identify the person by whom the disclosure was made? | <input type="checkbox"/> |
| 4. | Have you met with the discloser and advised them that their concerns will be treated seriously? | <input type="checkbox"/> |
| 5. | Have you advised the discloser you are investigating the disclosure, that you will keep him/her advised of the progress of the investigation as appropriate and that when your investigation is completed you will advise him/her of the outcome of that investigation? | <input type="checkbox"/> |
| 6. | Have you explained to the discloser the limits on confidentiality as set out in the Protected Disclosures legislation? | <input type="checkbox"/> |
| 7. | Have you explained to the discloser that if he/she is not satisfied with a decision not to pursue the matter further you can refer the matter to the Review group on his/her behalf for an examination of the investigation process and that this examination represents a final 'internal' decision on the matter ? | <input type="checkbox"/> |
| 8. | Are you familiar with procedures for conducting an investigation taking account of the principles of natural justice? | <input type="checkbox"/> |
| 9. | Have you advised the discloser of the outcome of your investigation and explained, in so far as is possible, the reasons for your decision? | <input type="checkbox"/> |
| 10. | If you arrived at the conclusion that in making his/her disclosure the discloser did not have a reasonable belief in the wrongdoing have you referred the matter to the Review Group? | <input type="checkbox"/> |
| 11. | Have you forwarded a copy of the report to the Review Group? | <input type="checkbox"/> |
| 12. | Have you forwarded a copy of the final report to the Head of Internal Audit? | <input type="checkbox"/> |
| 13. | Have you notified Corporate Governance of the date of the decision? | <input type="checkbox"/> |

Appendix F: Protected Disclosures Notification Form

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

Please note that protected disclosures must relate to a matter that you have reasonable grounds to be concerned about. It must not be merely intended to undermine the reputation of any colleague or service provider. If you make a protected disclosure which you know or reasonably ought to know to be false you will be guilty of an offence under the legislation.

1. I..... (name of worker making the protected disclosure)
wish to make a disclosure under the Protection Disclosures Act 2014

2. Grade

.....

Place of work.....

3. Category of Wrongdoing

- A criminal offence
- A failure to comply with a legal obligation
- A miscarriage of justice
- The endangering of an individual's health or safety
- Damage to the environment
- Unlawful or otherwise improper use of public funds
- Fraudulent activity
- That an act or omission is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement
- Concealment or destruction of evidence relating to the above.

4. Date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced

5. Is the alleged wrongdoing still ongoing

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

.....
.....
.....

.....
.....

7. Details of the protected disclosure *(care should be taken to only include the name(s) of individual(s) directly relevant to the report)*

.....
.....
.....
.....
.....

Please provide contact details⁶ at which the recipient can contact you:

Address.....
.....
.....
.....

Tel no.

Email

Worker's
signature.....

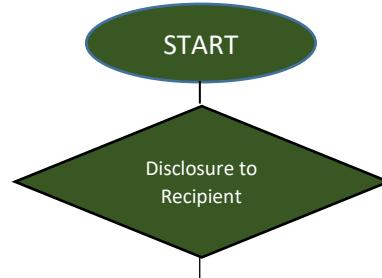
Date

⁶ Anonymous disclosures will be acted upon to the extent that this is possible given the constraints in obtaining further information on the alleged wrongdoing.

Participant	Role
Discloser	Person making the disclosure
Recipient	Person handling the disclosure usually a PO/PO equivalent/Asst. Secretary
Review Group	An Assistant Secretary and a senior Legal Services Officer
Head of Internal Audit	Record keeper and liaises with Sec. Gen. May request a recipient be appointed by Review Group
Corporate Governance	Act as Secretariat to Review Group and log receipt and flow of disclosure in respect of dates and outcome only , no records or details transferred to Corporate Governance

PROTECTED DISCLOSURE

Handling of Internal Disclosure



SCREENING PROCESS

- Initial steps carried out by the recipient:**
- Log the disclosure by notifying Corporate Governance of the following
 - Date disclosure received
 - Recipient name
 - Category of disclosure
 - Corporate Governance provide Ref No.
 - Notify Head of Internal Audit Unit providing the following
 - Ref No.
 - Contents of the Disclosure
 - Commence screening in consultation with colleague if appropriate and necessary

- Findings of initial screening notified to:**
- Discloser [detail of decision within 21 days]
 - Head of Internal Audit [give copies of records]
 - Corporate Governance to update disclosure log with the following information:
 - Date initial screening commenced
 - Date finding disclosed
 - Proceeding to investigation Yes/No/Review of "no" decision requested

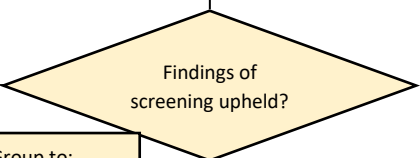
SCREENING REVIEW PROCESS

Not Proceeding to investigation
Recipient gives the discloser the option to appeal to Review Group

- Discloser appeals the results of the initial screening (via recipient).
- Review Group carry out review
- Discloser notified by recipient of results of review [within 16 days] as the final 'internal' examination of the matter

Discloser does not appeal

Recipient's initial findings not upheld



Finding upheld

- Proceeding to investigation notified by the Review Group to:
- Recipient and if appropriate alternative recipient appointed
 - Corporate Governance to update records with the following information
 - Date of review finding
 - Disclosure proceeding to investigation
 - Name of new recipient if appropriate

- Proceeding to investigation notified within 3 working days to:
- Head of Internal Audit who notifies the Secretary General
 - Corporate Governance updates records with the following information
 - Date of commencement of investigation

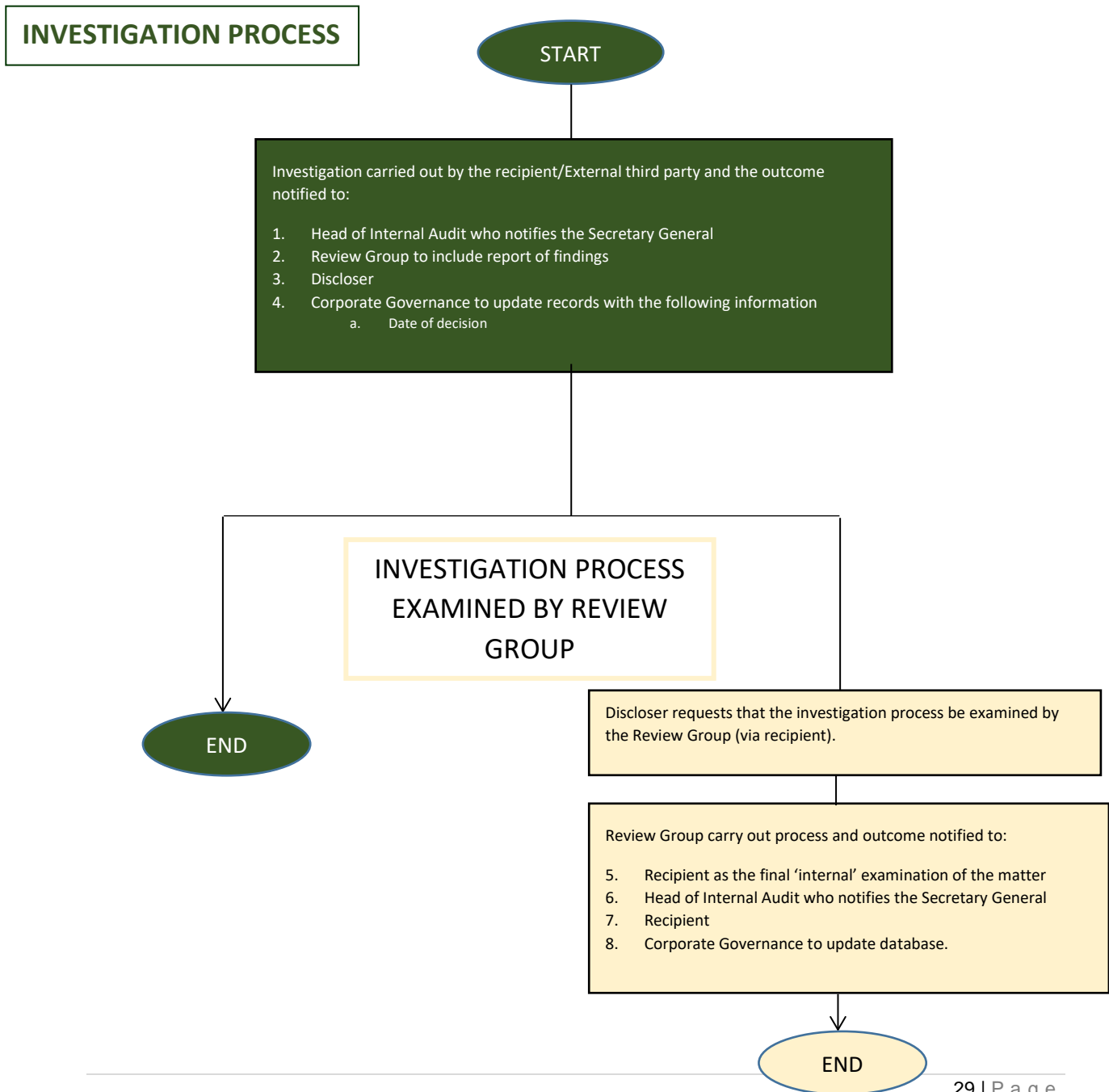
- Not proceeding to investigation notified by the Review Group to:
- Recipient
 - Corporate Governance to update records with the following information
 - Date of review finding
 - Disclosure not proceeding to investigation
 - Head of Internal Audit (give copies of records)



Participant	Role
Discloser	Person making the disclosure
Recipient	Person handling the disclosure usually a PO/PO equivalent/Asst. Secretary
Review Group	An Assistant Secretary and a senior Legal Services Officer
Head of Internal Audit	Record keeper and liaises with Sec. Gen.
Corporate Governance	Act as Secretariat to Review Group and log receipt and flow of disclosure in respect of dates and outcome only , no records or details transferred to corporate governance

PROTECTED DISCLOSURE

Handling of Investigation



Glossary

“Discloser” The ‘worker’ making the disclosure.

“disclosure”, in a case in which information disclosed is information of which the person receiving the information is already aware, means bringing to the person’s attention;

‘Mandatory Reporting’ The Protected Disclosures Act 2014 does not make whistleblowing mandatory. The legislation aims to protect those who come forward and voluntarily make a disclosure. However the legislation does not remove existing reporting obligations, so where the law already makes reporting mandatory the obligation to report remains in place.

‘Other Persons’ There is no definitive list of who can be or who cannot be a person for purpose of a disclosure under section 10 of the Act. Instead the legislation requires that the disclosure to that particular person be ‘reasonable’, bearing in mind all the circumstances and that key criteria are met.

“penalisation” means any act or omission that affects a worker to the worker’s detriment, and in particular includes—

- (a) suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- (e) unfair treatment,
- (f) coercion, intimidation or harassment,
- (g) discrimination, disadvantage or unfair treatment,
- (h) injury, damage or loss, and
- (i) threat of reprisal;

‘Prescribed Persons’ Disclosures relating to relevant wrongdoings can be made to certain ‘Prescribed Persons’ (section 7.2), usually the chief executive or relevant regulator such as the National Employment Rights Authority. The most up-to-date list of Prescribed Persons is available in [SI 367/2020](#)

“reasonable belief” means that the belief is based on reasonable grounds. This does not mean that the belief has to be correct. A worker has the right to be wrong in their reasonable belief. The test applied to “reasonable belief” will be an objective test i.e. the disclosure will be assessed based on how a reasonable person would respond to the information available to him or her at the time that the disclosure was made.

“Recipient” The person to whom the disclosure is made.

“Relevant Information” is information which the worker reasonably believes tends to show one or more “relevant wrongdoings” and which came to his/her attention through his employment.

“Relevant wrongdoing” The following matters are relevant wrongdoings for the purposes of this Act—

- that an offence has been, is being or is likely to be committed,
- that a person has failed, is failing or is likely to fail to comply with any legal obligation, 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,
- that a miscarriage of justice has occurred, is occurring or is likely to occur,
- that the health or safety of any individual has been, is being or is likely to be endangered,
- that the environment has been, is being or is likely to be damaged,
- that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,
- that an act or omission by or on behalf of a public body is oppressive,
- discriminatory or grossly negligent or constitutes gross mismanagement, or
- that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed.

In respect of the above it is immaterial whether a relevant wrongdoing occurred, occurs or would occur in the State or elsewhere and whether the law applying to it is that of the State or that of any other country or territory.

A matter is not a relevant wrongdoing if it is a matter which it is the function of the worker or the worker's employer to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of the employer.

“Worker” The legislation applies to all workers. The definition of ‘worker’ is very broad and includes employees, contractors, agency staff and trainees, temporary employees and former employees ([section 3](#)). There are different redress provisions for employees who suffer penalisation and unfair dismissal ([section 11 & 12](#) and [schedules 1 & 2](#)) than for other categories of ‘workers’ ([section 13](#)).

“PERSONAL COMPLAINTS VS PROTECTED DISCLOSURES”

Extract from D.PER [Guidance under section 21\(1\) of the Protected Disclosures Act 2014 for the purpose of assisting public bodies in the performance of their functions](#)