

Protected Disclosures Policy



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

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

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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 workers/staff¹ 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.

Independent advice on making a protected disclosure may be sought by contacting Transparency International Ireland which receives exchequer funding for the provision of a free Speak-Up Helpline and Legal Advice Centre in the regard. See <https://transparency.ie/> for more information. Advice and support may also be available from workers' trade unions as well as Citizens' Advice see [Citizens Information](#).

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 Information on who can make a protected disclosure is set out in Section 13 of this document

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 and the Protected Disclosures (Amendment) Act 2022 (“the Acts”) under which the Department is required to have procedures in place to enable staff of the Department to make “protected disclosures”. The Acts do 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 and the Protected Disclosures (Amendment) Act 2022.

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 and other workers as defined in the Acts 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 Acts 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 Acts 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. The ordinary meaning of disclosing “information” is conveying facts, such as stating that particular events have occurred.

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 people who are or were one of the following:-

- Employees
- Agency workers
- Contractors
- Trainees
- Volunteers
- Board members
- Shareholders
- Job applicants

WHAT TYPES OF DISCLOSURES CAN BE RAISED UNDER THIS POLICY?

14. This policy deals with disclosures that relate to ‘relevant wrongdoings’:-

- a) The commission of an offence;
- b) The failure of a person 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;
- c) A miscarriage of justice;
- d) A danger to the health and safety of any individual;
- e) Damage to the environment;
- f) An unlawful or otherwise improper use of funds or resources of a public body, or of other public money;
- g) An act or omission by or on behalf of a public body that is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement;
- h) A breach of specified EU law set out in the Directive; or
- i) Information tending to show any matter falling within any of the preceding paragraphs (a) to (g) has been, is being, or is likely to be concealed or destroyed, or an attempt has been, is being or is likely to be made to conceal or destroy such information.

15. It is immaterial whether a relevant wrongdoing occurred, occurs or would occur in Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other country or territory.

WORK RELATED CONTEXT

16. The information must come to the attention of the reporting person in a work-related context. A work-related context means current or past work activities in the public or private sector through which, irrespective of the nature of these activities, the reporting person acquires information concerning a relevant wrongdoing, and within which the reporting person could suffer penalisation for reporting the information.
17. A work-related context will include the work activities of persons listed in section 13 above. It may also include activities related to work such as training, travel and employer arranged social events. The information does not need to become known as part of the reporting person's own duties, or even relate to the reporting person's own employer/contractor, as long as the information comes to the attention of the reporting person in a work-related context. The possibility of penalisation of the reporting person for reporting information will be a factor in determining if the context is a work-related context.

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

18. A matter concerning interpersonal grievances exclusively affecting a reporting person, such as grievances about interpersonal conflicts involving the reporting person and another worker, or a complaint to the employer or about the employer which concerns the worker exclusively, is not a relevant wrongdoing for the purposes of the Acts. Personal employment complaints will generally be dealt with under the internal grievance or dignity at work, procedures. For example, a complaint about an alleged breach of an individual's own terms and conditions will generally be dealt with under the grievance (or equivalent) procedure. Alternatively, a claim that an individual is being bullied or harassed by a colleague will generally be dealt with under the dignity at work (or equivalent) procedure.
19. It is important to note that a disclosure of any wrongdoing which is the reporting person's, or the reporting person's employer's, function to detect, investigate or prosecute does not come within the terms, or attract the protections and redress, of the Act unless the relevant wrongdoing the subject of the report of a disclosure involves an act or omission on the part of the employer.

Even if the wrongdoing is a function of the reporting person to detect, investigate or prosecute, it will still be a protected disclosure if the wrongdoing involves an act or omission on the part of the employer.

For example, if the wrongdoing was by other employees, and it was the reporting persons function to investigate them, this would not be a relevant wrongdoing. However, if the wrongdoing was due to an act or omission of the employer, then this would be a relevant wrongdoing.

20. In addition, it should be noted that this Policy:

- is not a replacement for existing mandatory reporting schemes;
- does not cover a disclosure where the reporting person knowingly conveys false information. If it transpires that a reporting person 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

21. A reporting person 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.
22. It may be quite reasonable for a reporting person to believe that a wrongdoing is occurring on the basis of what he or she observes. A reporting person may not know all the facts of the case, 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 reporting person may have reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that s/he was mistaken.
23. No reporting person will be penalised simply for getting it wrong, so long as they had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.
24. Motivation is irrelevant when determining whether or not a report is a disclosure protected by the Act. All protected disclosures should be dealt with in the same manner regardless of the worker’s motivation for making the report, and the worker should be protected so long as the worker reasonably believes that the information disclosed tended to show a wrongdoing.
25. Where a worker makes a report of alleged wrongdoing it should be given appropriate consideration, in line with the public body’s Procedures. The public body should generally focus on the report made (the message), as opposed to any disciplinary (or other) issues related to the person making the report of a disclosure (the messenger).
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 Acts and, furthermore, may result in disciplinary action against the reporting person.

ANONYMOUS DISCLOSURES

27. An anonymous disclosure is where a reporting person 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 Acts. 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.
28. It should be noted that keeping the reporting person informed and protecting the reporting person from penalisation may be difficult or impossible to apply unless the reporting person’s

anonymity lifts. Furthermore, a reporting person cannot obtain redress under the Acts without identifying themselves.

29. Where the anonymous report contains enough information to allow an initial assessment that there is prima facie evidence that a relevant wrongdoing has occurred, follow-up action should be taken by the Department to the extent that is possible from the information provided. Where it is possible to communicate with the reporting person (e.g. they have made their report via an anonymous email account), it may be possible to seek further information from the reporting person to make a better initial assessment or as part of further follow-up action.

DISCLOSURE OF INFORMATION

30. 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.
31. 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.
32. 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.
33. Where a report has been made, whether or not that has been assessed or investigated, the disclosing person is still required to conduct themselves professionally and to continue to carry out their duties as normal. The disclosing person should not take it upon themselves to assume responsibility for promoting a culture of transparency within the organisation. Normal management of a worker who has made a report does not constitute penalisation. This can include the taking of disciplinary action against the worker for matters unrelated to the substance of the report.

HOW CAN YOU MAKE A DISCLOSURE?

Disclosure to the Department

34. A person may raise concerns informally at first for example with their line manager rather than immediately using the formal internal channels. This is particularly the case where the concern is a minor one, albeit that it may technically be a relevant wrongdoing under the Act.
35. Where the line manager is comfortable doing so, these concerns can be addressed by the line manager in the first instance.

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.

36. Should a worker raise such concerns with a line manager, there is no obligation to follow the requirements in the Act regarding formal acknowledgement, follow-up, feedback, etc., since these reports are not being made through the formal channel.
37. The line manager may need to follow up on the concern and provide feedback to the worker, but this can be done in a more informal manner.
38. Line managers may choose to seek guidance on how they handle a concern raised informally with them with the Department's designated person and may direct the disclosing person to the formal internal reporting channel if necessary.
39. Despite a concern being raised in an informal manner with a line manager, the worker may still be entitled to the protections of the Act.
40. Protected Disclosures may be made to the Department's Head of Corporate Governance, currently Mr. Andrew Patterson. **The Head of Corporate Governance Unit will be the Department's designated person for managing protected disclosures.** And will be responsible for
- receiving and following up on reports;
 - carry out an initial assessment of the report;
 - maintaining communication with the reporting person and
 - where necessary, requesting further information from and providing feedback to the reporting person.
41. Disclosures should ideally be made in writing ideally by completing and sending the Protected Disclosure Notification Form (Appendix 1) to Protected_Disclosures@equality.gov.ie. A disclosure 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).
42. If the disclosure is made verbally, the disclosure recipient (the line management or the Designated Person), should capture the above information in a record, 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.
43. For data protection reasons, to minimise the processing of personal data, the reporting person 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 reporting person to make the protected disclosure).

44. The Department encourages reporting persons 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.

Disclosure to another responsible person

45. Where the worker reasonably believes that the wrongdoing relates solely or mainly to the conduct of a person other than the worker's employer, or to something for which that other person has legal responsibility, then the worker can disclose to that other person. For example, if the Department engaged a contractor company and an employee of a contractor became aware of a relevant wrongdoing in relation to the Department in a work-related context, then it may be more appropriate for the disclosure to be made directly to the Department rather than the individual's own employer.
46. If a report is received in the Department, but not through the internal channels, the report should nonetheless be dealt with in accordance with the procedures for handling internal reports. Where a report appears to be directed to a Minister, it should be treated as a disclosure to a Minister.

Disclosure to prescribed persons

47. Certain persons are prescribed by the Minister for Public Expenditure and Reform to receive protected disclosures ("prescribed persons"). This includes the heads or senior officials of a range of bodies involved in the supervision or regulation of certain sectors of the economy or society.
48. A reporting person may make a protected disclosure to a prescribed person if the reporting person reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the prescribed person is prescribed. However, the Act also provides an additional requirement in this case in that the reporting person must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true.
49. The list of prescribed persons may be found via this weblink:
<https://www.gov.ie/prescribed-persons>.
50. The prescribed persons of relevance to the work of this Department include:-
- The Chief Executive, Tusla – The Child and Family Agency
 - The Chief Executive Officer, the Adoption Authority of Ireland
 - The Director, Oberstown Children Detention Campus

- Chief Executive Officer, Pobal
- Chief Executive Officer, CORU - The Health and Social Care Professional Council
- Secretary; The Standards in Public Office Commission
- The Chief Executive; The Health and Safety Authority
- The Comptroller and Auditor General; Office of the Comptroller and Auditor General
- Director; Office of the Commission for Public Service Appointments
- Commissioner for Data Protection in the Data Protection Commission or, where there is more than one such Commissioner, the chairperson of the Commission.

51. An impartial designated person or persons must also be appointed by the prescribed person. This designated person is responsible for providing information on making an external disclosure, receiving and following up on reports, maintaining communication with the reporting person and where necessary, requesting further information from and providing feedback to the reporting person.

Disclosure to a Minister

52. If a worker is or was employed in a public body, the worker may make a protected disclosure to the Minister for Children, Equality, Disability, Integration and Youth (the Minister) for functions, whether statutory or otherwise, that are in the remit of the Minister or a Minister of State to whom any such function is delegated.

53. In order to make a disclosure to the Minister, the worker must reasonably believe that the information disclosed tends to show one or more relevant wrongdoings. One or more of the following must also apply:

- The worker has previously made a disclosure of substantially the same information to their employer, other responsible person, prescribed person, or relevant Minister, as the case may be, but no feedback has been provided to the worker in response to the disclosure within the period allowed, or, where feedback has been provided, the reporting person reasonably believes that there has been no follow-up or that there has been inadequate follow-up;
- The worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing reported;
- The worker reasonably believes that the disclosure contains information about a relevant wrongdoing that may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.

54. To ensure that the Minister is aware of the worker's intention, it is recommended that the worker specify when making a disclosure under this channel that it is a disclosure to the Minister under section 8 of the Protected Disclosures Act 2014.

55. Disclosures received by Ministers are required to be forwarded by Ministers to the Commissioner.

Disclosure to the Protected Disclosures Commissioner

56. The Protected Disclosures (Amendment) Act 2022 created the Office of the Protected Disclosures Commissioner. The Commissioner has certain powers and responsibilities under the Act. The Commissioner's primary duty is to refer any reports received under the Act to the most appropriate prescribed person (or other suitable person, if a prescribed person cannot be identified). Only as a last resort should the Commissioner directly follow-up on a report.
57. The Commissioner may receive disclosures by means of external reporting channels, which must meet the same criteria as the external reporting channels for prescribed persons. The Commissioner may also receive disclosures which have been transmitted onwards from Government Ministers.
58. When the Commissioner receives a report, within 14 calendar days (or a longer period as deemed reasonable due to the nature and complexity of the report) the Commissioner must identify the prescribed person which the Commissioner considers appropriate and transmit the report to them.
59. In the alternative, the report can be transmitted to another suitable person, where the Commissioner considers there is no appropriate prescribed person; or where having regard to the nature of the wrongdoing concerned the Commissioner is of the opinion that the report should not be transmitted to the prescribed person due to the risk of serious penalisation against the reporting person or that evidence of the wrongdoing would be concealed or destroyed. Suitable persons must be informed of their obligations under the Act when a report is transmitted to them.
60. Only where a prescribed person or other suitable person cannot be identified will the Commissioner accept the report and notify the reporting person. Once the report has been accepted, the Commissioner must perform an initial assessment, feedback and follow-up.
61. A person to whom a report is transmitted by the Commissioner may notify the Commissioner within 7 calendar days of receipt that they are of the opinion the report does not come within their remit, and the reasons for this. The Commissioner may not accept this opinion; or accept this opinion and transmit the disclosure to another prescribed person / suitable person; or where no prescribed person / suitable person can be identified, accept the report and follow-up.

REPORTING CHANNELS

62. The Department has secure reporting channels in place that ensures the identity of the reporting person and any other third party mentioned is protected, and that prevent access other than by designated persons. Access to the email inbox used is restricted solely to persons designated to receive and handle reports. The contents of any disclosure and any material arising from the report (e.g. as part of any follow-up action) are kept secure and confidential and are only available to the designated person or other members of their team or other appropriate persons, as required. Where a physical meeting is required with the reporting person, the meeting place used should ensure privacy and protection of the identity of the reporting person.
63. The Department will acknowledge receipt of the report in writing within 7 working days. In its acknowledgement, the Department will provide further information about the protected

disclosures process. It will provide information on what will happen – and when – after the report is made. It will confirm that the identity of the disclosing person will not be disclosed to anyone else without their explicit consent, other than strictly within the provisions permitted in the Act and that the reporting person will be protected from penalisation.

64. The Department will keep in regular contact with the disclosing person and set out the type of feedback that will be provided, as well as the type of feedback that will not be provided. The reporting person may request in writing further feedback at three month intervals. That said, personal information relating to another worker will not be provided, such as whether a disciplinary process has taken place and the outcome of any such process.

ASSESSMENT

65. Following receipt of an allegation of wrongdoing, an initial assessment, or screening process will be undertaken by the Department. This may be conducted by the Department's designated person or delegated to another authorised person, as appropriate.
66. The initial assessment will involve an assessment of the report to seek to determine if there is prima facie evidence that a relevant wrongdoing may have occurred and if it should be treated as a protected disclosure, having regard to the provisions of the Act.
67. If it is unclear whether the report qualifies as a protected disclosure, the designated person will treat the report as a protected disclosure (and protect the identity of the reporting person and any persons concerned, in accordance with the Procedures) until satisfied that the report is not a protected disclosure.
68. It may be necessary, as part of the initial assessment, to differentiate between protected disclosures and complaints exclusively affecting the worker.
69. The report will be assessed to determine the nature of the information disclosed and the procedure or procedures that is / are most appropriate to be used to investigate the individual elements of the allegation. If, having assessed the report, it is deemed to relate solely to a complaint exclusively affecting the worker then the reporting person will be encouraged to utilise other processes (for example, the grievance or dignity at work policy) so that the complaint can be dealt with in an appropriate manner, and should be told that the report will not be considered under the protected disclosures procedure.
70. If, having assessed the report, there is a mix of different issues (some involving a protected disclosure, some involving a complaint exclusively affecting the worker) then an appropriate process / processes will be applied to deal with each of the issues. The process to be applied may differ from case to case.
71. If, after the initial assessment, the designated person (or delegate) determines that there is no prima facie evidence that a relevant wrongdoing may have occurred, then the matter can be closed (or referred to another internal process, as above), and the reporting person notified.
72. If, after the initial assessment, the designated person (or delegate) determines that there is prima facie evidence that a relevant wrongdoing may have occurred, the designated person (or

delegate) should take appropriate action to address the relevant wrongdoing. This will normally involve a consideration of whether the alleged wrongdoing is something that can or should be investigated by the public body or not, and, if so, what steps should be taken as part of such an investigation. It is important to note that some matters may be of such seriousness that the investigation will more appropriately be carried out externally or by professional experts in a particular area. In some cases the matter may need to be reported to, and investigated by, An Garda Síochána or another body with the statutory power and function of investigation of particular matters. If an investigation is required, the public body should consider the nature and extent of the investigation. This could consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoings, or an external investigation by another body.

INVESTIGATION

Informal process for addressing reports

73. The nature of an investigation process is a matter to be determined by the Department having regard to circumstances including the nature of the alleged relevant wrongdoing. Where the alleged relevant wrongdoing in the disclosure is relatively straightforward, or is not very serious, or does not require consideration of the making of an adverse finding about any individual an informal appraisal may be sufficient.
74. By way of example only, it may involve discussion with relevant persons and/or consideration of documents or information only and/or a broad review of issues without specific enquiry into the facts of a particular scenario.
75. There may be occasions where an informal process is commenced but the person(s) appointed to carry out that informal process identifies in the course of that process that the matter is more suitable for a formal investigation, in which case that should be reported to the designated person.

Investigation – formal process

76. Terms of Reference will not be necessary for all formal investigations, but for more complex or serious investigations, it will usually be necessary to draw up Terms of Reference. The scope and conduct of the investigation will not be unduly restricted by the contents of the Terms of Reference and that the investigator will not be precluded from taking certain actions or examining further issues that may arise in the course of the investigation. For example, Terms of Reference should allow investigators to investigate additional issues that may come to light during the course of the investigation, not just those set out in the Terms of Reference. The Terms of Reference will also give investigators latitude to interview any witnesses and to review any documentation that they deem relevant.

FEEDBACK

77. The purpose of the feedback is to give reassurance and affirmation that the matter is receiving attention. The reporting person can expect information on the action taken in assessing the

content of the disclosure and actions taken to address the allegation of wrongdoing. However, no information can be 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.

78. Feedback will be provided to the reporting person within 3 months of acknowledgement of receipt of the report of a disclosure or 3 months of the receipt of the report if no acknowledgement has issued. Feedback may be provided earlier than three months if the circumstances allow.
79. Where the reporting person requests in writing that they receive further feedback after the initial three month period, this will be provided at intervals of three months until the procedure relating to the report is closed.
80. If there is no relevant wrongdoing identified, this may be communicated in the feedback. If an alleged relevant wrongdoing is identified, this may be noted in the feedback, as well as identifying actions that have been taken, or are intended to be taken, to address the wrongdoing, and the reasons for these actions. By way of example, actions may include strengthening processes or procedures where a weakness has been highlighted as a result of the report of a disclosure; providing additional training to personnel; upgrading or replacing equipment; improving cyber security measures, etc.
81. Care should be taken to ensure that any feedback provided complies with data protection legislation and does not breach the data protection rights of any persons involved. Similarly, the requirement to provide feedback does not override any statutory obligations that might apply to a public body or a prescribed person as regards confidentiality and secrecy.
82. Any information and feedback is provided in confidence. There is no obligation to inform the discloser of the commencement, 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.
83. The reporting person will be informed in writing of the final outcome of any investigations triggered by the report of the disclosure, subject to legal restrictions applying concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation. This does not require the provision of the full investigation report. The outcome of the investigation will be provided, subject to the above restrictions.

PROTECTIONS FOR THE REPORTING PERSONS

PROTECTION FROM PENALISATION

84. 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.
85. Reporting persons will be protected against penalisation and with certain exceptions will have their identity kept confidential. The Acts also provide that penalisation and breaching of the confidentiality provisions is a criminal offence, among other offences in the Act. 12.1 Protection against Penalisation. The Act provides for specific remedies for workers who are penalised for making a protected disclosure.
86. Penalisation means any direct or indirect act or omission occurring in a work-related context, due to the making of a report, and which causes (or may cause) an unjustified detriment to a worker. A non-exhaustive list of penalisations is set out below.
- suspension, lay-off or dismissal,
 - demotion, loss of opportunity for promotion, or withholding of promotion,
 - transfer of duties, change of location of place of work, reduction in wages or change in working hours,
 - the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
 - coercion, intimidation, harassment or ostracism,
 - discrimination, disadvantage or unfair treatment,
 - injury, damage or loss,
 - threat of reprisal,;
 - withholding of training;
 - a negative performance assessment or employment reference;
 - failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanent employment;
 - failure to renew or early termination of a temporary employment contract; • harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income;
 - blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry;
 - early termination or cancellation of a contract for goods or services;
 - cancellation of a licence or permit, and

- psychiatric or medical referrals.

87. Any form of penalisation is prohibited and the fact that a type of behaviour or penalisation is not specifically referenced above does not mean that it cannot be penalisation under the Acts.
88. Penalisation of workers who make a report will not be tolerated. Complaint of penalisation can be made in writing and addressed to the Head of Human Resources or the Secretary General.
89. The Department commits to assessing and/or investigating such notifications and to take appropriate action (which may include disciplinary action) where necessary.
90. Complaints of penalisation will be treated separately to the actual report itself.
91. Such complaints can be handled by the HR function unless this is inappropriate in the circumstances.
92. The external remedies available to workers who believe they have been penalised for making a protected disclosure include a claim before the Workplace Relations Commission and a claim for injunctive relief in the Circuit Court.
93. The relevant time limits that apply for bringing a penalisation claim to the Workplace Relations Commission is within 6 months of the penalisation and the Circuit Court is within 21 days of last instance of penalisation.

PROTECTION OF IDENTITY OF THE PERSON MAKING A PROTECTED DISCLOSURE

94. Where a reporting person 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.
95. 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:
 - I. The person to whom the disclosure was made or transmitted shows that he / she took all reasonable steps to avoid such disclosure.

(This relates to a situation where all reasonable steps were taken to avoid disclosure of the identity, but the identity has been revealed in some manner, for example through an unforeseeable error or other unavoidable occurrence.)

- II. The person to whom the disclosure was made or transmitted had a reasonable belief that it was necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment;
- III. Where the disclosure is otherwise required by law;
- IV. Where the disclosure is a necessary and proportionate obligation imposed by Union law or the law of the State in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned.

(This relates to a statutory or criminal investigation or judicial proceedings. It does not relate to internal investigations conducted by the Department or prescribed person.)

96. Where it is decided that it is necessary to disclose the identity of the reporting person or other information that may or will disclose the identity of the reporting person, in the cases referred to at II or IV above, the reporting person should be informed of this decision in advance of the disclosure, and the reasons for the disclosure, unless the notification would jeopardise:
 - I. The effective investigation of the wrongdoing,
 - II. The prevention of serious risk to the security of the State, public health, public safety or the environment, or
 - III. The prevention of crime or prosecution of a criminal offence.
97. The reporting person should also be informed of the applicable internal review process, which may be invoked by the reporting person in respect of this decision. The review will be organised by the Protected Disclosures Designated Person 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.
98. Staff who are concerned that their identity is not being protected should notify the Protected Disclosures Designated Person who commits to assess / investigate such notifications and to take appropriate action where necessary.
99. 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.

PROTECTIONS FOR THE RESPONDENT

100. Staff making a protected disclosure will have the assistance of the Employee Assistance Programme.
101. 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.
102. 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 Act, such as the reporting person's right to have their identity protected. It may not always be necessary under fair procedures for the Respondent to question or challenge the reporting person directly, for example where the information has been independently verified by way of documentary evidence or otherwise.

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.

103. There are very limited cases where the duty of confidentiality does not apply permitting the disclosure of the identity of the reporting person to a Respondent. This may make it difficult to allow Respondents to challenge the evidence and may affect the application of natural justice and fair procedures.
104. Where the identity of the reporting person cannot be disclosed to the Respondent, it may be possible for the Respondent to pose questions and challenge the evidence by way of an intermediary (for example, the questions are put in writing via a third person / the investigator, who then puts these separately to the reporting person, and informs the Respondent of the reporting person's response).
105. Difficulties will also arise where a protected disclosure is made anonymously. In this case, for example, it may not be possible to take further evidence from the reporting person, and for the Respondent to challenge the person making the report. On the other hand, the only information available from the reporting person will be the contents of the disclosure.
106. In either case, whether the identity of the reporting person is known or is anonymous, the Respondent should be permitted to address the contents of the disclosure, and also to address any evidence or witness statements gathered as part of the investigation.
107. The Head of Human Resources (HR), in consultation with the Protected Disclosure Designated Person, will arrange that appropriate supports and protections are available as and when appropriate.

NATURAL JUSTICE AND FAIR PROCEDURES:

108. Where an allegation is made against an individual (the "Respondent"), the Respondent will be afforded appropriate protection. While the procedures for dealing with allegations against an individual will reflect the varying circumstances of public bodies, such procedures must comply with the general principles of natural justice and fair procedures, as appropriate.
109. Two of the key principles of natural justice and fair procedures are that the Respondent has the right to know the allegations against them and that the Respondent has the right to a fair and impartial hearing.
110. 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 Act, such as the reporting person's right to have their identity protected. It may not always be necessary under fair procedures for the Respondent to question or challenge the reporting person directly, for example where the information has been independently verified by way of documentary evidence or otherwise.

Legal Representation

111. In general, the Respondent's right to representation should be limited to a co-worker or trade union representative. While an individual is entitled to obtain their own legal advice, there

is no automatic right to legal representation at the investigation meetings themselves. In addition, the Respondent has no right to have legal costs paid by the public body. This applies equally to legal representation and payment of legal costs for the reporting person. A right to legal representation will only arise in exceptional circumstances. The investigator should consider whether failure to allow legal representation is likely to imperil a fair hearing or a fair result, taking into account the general circumstances of the case including:

- I. the seriousness of the charge and of the potential penalty;
- II. whether any points of law are likely to arise;
- III. the capacity of the Respondent to present their own case and whether the Respondent is suffering from any condition that might affect their ability to do so;
- IV. whether there is any procedural difficulty involved in the case;
- V. the formality of the investigation meeting (e.g. if there will be witnesses attending and if it will be necessary to challenge the evidence by putting information to the witnesses, and whether the Respondent would be capable of doing this without legal representation);
- VI. the need for reasonable speed in conducting the investigation; and
- VII. the general need for fairness as between the parties.

RIGHT TO REVIEW

112. A Respondent may request a review of the investigation where an adverse finding is made against them that gives rise to a disciplinary process or further investigations or processes against the Respondent.

113. A party affected by a process or decision reached may request a review of the following:-

- I. The conduct or outcome of any follow-up actions (including any investigation) taken on foot of the receipt of a report
- II. The conduct or outcome of any investigation into a complaint of penalisation; and
- III. Any decision to disclose the identity of a reporting person (except in exceptional cases).

114. The system of review provides for the following:

- an affected person (“the applicant”) can request a review by setting out the basis for their request in writing to the Secretary General;
- requests for review must be submitted within 2 months of the applicant learning of the outcome, action or decision;
- The review will be considered by a person not involved in the original process

under review. The Secretary General will give consideration to appointing a person from outside the organisation to conduct the review

- The review will be carried out by a person of at least equivalent level of seniority as the person who carried out the original process;
- The role of the reviewer will not be to re-investigate the matter in question but to address the specific issues the applicant feels have received insufficient consideration. The reviewer should, therefore, consider:
 - o Whether the correct procedures were followed;
 - o In the case of an investigation, whether the terms of reference were adhered to;
 - o Whether the conclusions/findings could or could not reasonably be drawn from the information/evidence on the balance of probability;
- Where a review finds significant shortcomings or failings in the process, the public body should then consider what further action(s) may or may not need to be taken in response to said findings; and
- The outcome of the review will be final and there is no entitlement to further reviews of the same issue.

RECORDS

115. Any person to whom a report is made or transmitted must keep a record of every report made to them, including anonymous reports.
- 116.** Records should be retained for no longer than is necessary and proportionate to comply with the provisions of the Act or any other legislation.
117. Public bodies and prescribed persons should ensure that records relating to protected disclosures are ring-fenced and any access to records should be strictly limited to those who require access in accordance with the Procedures.
118. Records concerning a public body's general administration of its functions under the Act are subject to FOI. However, the FOI Act does not apply to a record relating to a report made under the Protected Disclosure Acts.

ADMINISTERING THE PROTECTED DISCLOSURES POLICY

ADMINISTRATION AND SUPERVISION OF THE PROTECTED DISCLOSURES POLICY

119. Head of Internal Audit (HIA), or a senior member of the Internal Audit team in the absence of the HIA, shall be appraised by the Protected Disclosures Designated Person of all

relevant matters. They will be notified by the Protected Disclosures Designated Person 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 Designated Person), 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 Designated Person where they were the disclosure recipient. The Protected Disclosure Designated Person should at all times be advised when an assessment is made that the protected disclosure is complete.

120. 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 Designated Person 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.
121. 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

122. 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 Designated Person. 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.
123. This Report must be in a form which does not enable the identification of the persons involved.
124. The Department's annual report will also report on protected disclosures in a suitable manner based on information supplied by Internal Audit.

ASSISTANCE

125. The Protected Disclosures Designated Person 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

126. 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

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

CONTACT DETAILS

128. Protected Disclosures Designated Person:
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

129. **Approved by Management Board - January 2023**

APPENDIX 1

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
 - ☐ A breach of specified EU law set out in the Directive.
 - ☐ 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).*

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9. Please provide contact details⁴ 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: ____/____/____

⁴ 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