



# Protected Disclosures

Department of Social Protection

Policy and Guidance for Protected  
Disclosures Reporting

June 2016



## **1. Introduction**

The Protected Disclosures Act 2014 ('the Act') provides a statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the workplace. The Act provides workers who contend that they have been penalised for making a report of possible wrongdoing with access to significant protections and scope for securing redress. The Department of Social Protection 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.

## **2. Purpose**

This document outlines the Department's policy and procedures for dealing with disclosures by workers who have a reasonable belief that wrongdoing has occurred and/ or is ongoing i.e. protected disclosures.

This policy should be read in conjunction with the guidance at the appendix.

## **3. Scope**

The policy applies to all workers. Workers refer to staff of the Department, contractors and consultants, and staff employed in Branch offices.

## **4. 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 the guidance at the Appendix. 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.

### **'Reasonable belief'**

The term "reasonable belief" means that the belief that a wrongdoing has occurred 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 his/her reasonable belief.

The motivation of the worker for making a disclosure is irrelevant in determining if it is a protected disclosure under the Act.

The disclosure will be assessed on the basis of how a reasonable person would respond to the information available to him or her at the time that the disclosure was made.

### **'Relevant wrongdoing'**

The definition of 'relevant wrongdoing' includes:

- Criminal offences;

- Failure to comply with legal obligations;
- Miscarriages of justice;
- Health and safety matters;
- Environmental damage;
- Unlawful or improper use of funds or resources of a public body;
- An act or omission by or on behalf of a public body which is oppressive, discriminatory, grossly negligent or constitutes gross mismanagement;
- Concealment or destruction of information relating to any of the foregoing.

### **‘In connection with their employment’**

The information must come to the attention of the worker in connection with their employment. 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.

## **5. Roles and Responsibilities**

Overall responsibility for implementing legislation, policies and guidance pertaining to protected disclosures rests with the Management Board of the Department.

A group (hereafter called ‘the Protected Disclosures Group’ or ‘PDG’) comprising the Head of Internal Audit, the Principals with responsibility for Business Information Security Unit, Internal Control Support Unit and Human Resources (other business areas may also have a role depending on the nature of the case) will have responsibility for assessing disclosures, determining if they are protected disclosures and referring cases to the appropriate section/ authority for investigation.

A person making a disclosure (the ‘discloser’) must have a reasonable belief that wrongdoing occurred.

A recipient of a disclosure in most cases is expected to be the Principal Officer to whom the worker reports. The PO must immediately report the disclosure to the Head of Internal Audit who will in turn advise the PDG for its attention.

A recipient of a disclosure may also be an external party and that party may conduct its own assessment.

## **6. Policy Statement**

In implementing protected disclosure legislation, the Department’s policy is:

- To encourage workers to raise reasonable concerns regarding possible wrongdoing in the workplace.
- To assess/ investigate disclosures in a thorough, competent and timely manner.

- To take reasonable steps to ensure that penalisation<sup>1</sup> does not arise in the case of a discloser, provided the disclosure was made based on a reasonable belief. This includes investigation of claims of penalisation and consideration of disciplinary action where warranted.
- To treat seriously cases where workers make allegations of wrongdoing under the Act without a reasonable belief that the wrongdoing occurred. The protections of the Act may not apply to such workers and they may be subject to disciplinary action if, for example, an allegation of wrongdoing was known to be untrue or misleading or was frivolous or vexatious.
- To deal with allegations made against individuals having due regard for the principles of natural justice and fair procedures which may include a right to challenge the evidence against him/ her.

This policy is not intended to replace the normal handling of issues which takes place in the ordinary course of business.

The disclosure of a wrongdoing does not confer any protection or immunity on a worker in terms of his/ her involvement in that wrongdoing.

## **7. What type of Disclosure is not covered by this Policy and Guidance?**

It is to be expected that concerns which relate to day to day operational matters will in the normal course of events, be brought to the attention of the relevant line manager and dealt with accordingly.

Personal concerns, for example, regarding an individual's own terms and conditions of employment or bullying/harassment claims, would not be regarded as protected disclosures and would be more appropriately processed under the Grievance and Dignity at Work Procedures.

## **8. Anonymous Reporting**

The Department will accept anonymous disclosures and they will be acted upon to the extent that this is possible, given the constraints in obtaining further information when it is received anonymously.

However, the protections available under the Act and other elements of the protected disclosures procedure (e.g. keeping the discloser informed) cannot in those circumstances be accessed by a worker who makes an anonymous disclosure unless the worker is prepared to dispense with anonymity.

## **9. Review of Policy and Guidance**

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<sup>1</sup> "Penalisation" includes dismissal and causing detriment to a worker, and can relate also to the actions of co-workers. It is defined in Section 3 (1) of the Act.

The guidance will be subject to review as practices and policies pertaining to protected disclosures develop.

**Issued on behalf of the Management Board.**

**June 2016.**

## **Appendix**

### **GUIDANCE FOR MAKING AND DEALING WITH POTENTIAL PROTECTED DISCLOSURES**

#### **1. Procedure when making a disclosure**

##### **To whom should the disclosure be made?**

Any worker who has a reasonable belief in relation to a wrongdoing/s as set out in the Protected Disclosure Policy ('the policy') should disclose the relevant information to his/her Principal Officer in the first instance.

Where the discloser is a Principal Officer he/she should make the disclosure to a member of the Management Board.

Workers are entitled to make their disclosures outside of their line management and such disclosures can be made to the Head of Internal Audit.

Although workers are encouraged to use the internal channels to make a disclosure, they may contact an appropriate external body, as defined by the Act, to make a disclosure (e.g. The Comptroller and Auditor General, the Director of Internal Audit in the Revenue Commissioners)<sup>2</sup>. However, stringent requirements need to be met for disclosures made externally to qualify as protected.

##### **How should a disclosure be made?**

Workers may make disclosures either verbally or in writing.

##### **What information should be provided when making a disclosure?**

Disclosers need to communicate information which on the basis of a reasonable belief either shows, or tends to show, wrongdoing which occurred and/or is ongoing in connection with their employment. This normally involves wrongdoing that is likely to cause harm to the Department, as opposed to personal complaints.

At a minimum, disclosures should include the following details:-

- The discloser's name, position in the organisation, place of work and contact details;

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<sup>2</sup> The external channels are outlined in Sections 7, 8, 9 and 10 of the Act and in Statutory Instrument 339 of 2014. There are stringent requirements set out in Section 10 for the alternative disclosures to qualify as protected disclosures under the Act.

- The date 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;
- The name of the person(s) (if known or applicable) allegedly involved in the alleged wrongdoing;
- Any other relevant information;

Disclosers should also report any alleged penalisation they have incurred in relation to the disclosure.

### **When should a Disclosure be made?**

Workers should make disclosures of potential wrongdoing at the earliest possible time after it has come to their attention.

Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so.

## **2. Procedure for a Recipient on receiving a Disclosure**

Principal Officers who receive a disclosure should advise the Head of Internal Audit or a member of the PDG in his absence immediately on its receipt.

The Head of Internal Audit will then convene the PDG.

## **3. Assessment of a Disclosure**

The disclosure will need to be assessed to determine whether or not

- the person making the disclosure has a reasonable belief that wrongdoing occurred and,
- the potential wrongdoing is a 'relevant wrongdoing' within the meaning of the Act and,
- the potential wrongdoing was/ is in connection with the worker's work and,

The PDG will make a finding as to whether the disclosure is a protected disclosure or not. This finding can be subject to review.

A finding that a disclosure is a protected disclosure is not a finding that a wrongdoing took place. The investigation of wrong doing is separate and the PDG will refer the protected disclosure to the relevant area for investigation as appropriate.

Given that disclosures may be of varying complexity, no specific time limit for all assessments can be given, but it is expected that in most instances, an assessment will be completed within 28 days.

#### **4. Investigation by an external party**

If the discloser makes a disclosure to an external party, that party may decide if it is a protected disclosure and the nature of any investigation that may take place (e.g. the C&AG). In such cases, the Department will co-operate fully with the investigation.

#### **5. Protection against penalisation and support**

If it is determined that penalisation is taking place following a protected disclosure then all possible steps to protect the discloser and to stop the penalisation will be taken. Disciplinary action against those responsible for the penalisation may need to be taken if appropriate.

#### **6. Confidentiality**

All reasonable steps will be taken to treat disclosures made through this policy in a confidential and sensitive manner. The worker's identity will not be disclosed without his/her consent, unless it is required by law or necessary for the effective investigation of the relevant wrongdoing.

#### **7. Records to be maintained by the person(s) conducting the assessment of whether a disclosure is a protected disclosure**

Records, including timelines, in relation to any assessment and any / investigation undertaken should be maintained.

Records of all concerns raised and the outcome of an assessment and subsequent investigation will be maintained for a minimum of five years after the closure of the case. These records will be maintained in a confidential and secure environment.

**ENDS**