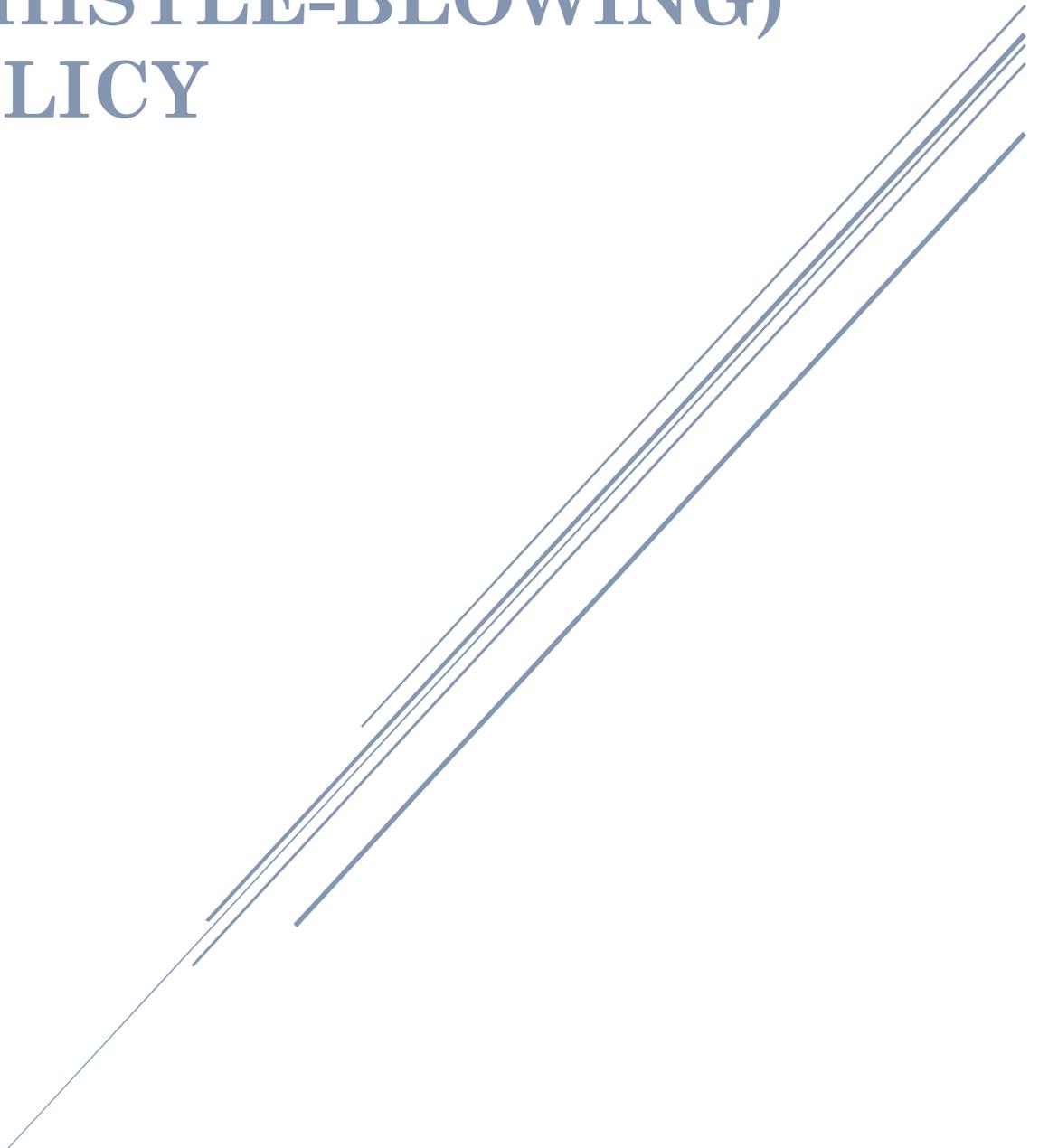




Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas
Irish Human Rights and Equality Commission

PROTECTED DISCLOSURES (WHISTLE-BLOWING) POLICY



June 2020

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1.0 Introduction and Objective

The Irish Human Rights and Equality Commission (“IHREC”) is committed to the highest standards of openness, probity and accountability. The purpose of this document is to set out IHREC’s policy and procedures on Protected Disclosures in the workplace under the Protected Disclosures Act, 2014. The vast majority of concerns that workers might experience in their day to day working environment can be addressed through normal workplace reporting. This policy refers to specific wrongdoings as identified within the legislation.

The Protected Disclosures Act 2014 provides a statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the workplace in the knowledge that they can avail of significant employment and other protections. The Act requires every public body to establish and maintain procedures for the making of protected disclosures and procedures for dealing with such disclosures. It also requires that public bodies provide written information relating to the procedures established.

This Protected Disclosures Policy and procedure is fundamental to the IHREC’s professional integrity. In addition, it reinforces the value IHREC places on workers to be honest and respected members of their individual professions. It provides a method of properly addressing *bona fide* concerns that individuals within IHREC might have, while also offering whistle-blower’s protection from victimisation, harassment or disciplinary proceedings.

This policy is intended to assist individuals who believe they have discovered malpractice or impropriety and is not to be used as a means to question financial or business decisions taken by the IHREC.

2.0 Scope

This policy covers situations where an individual (the “Whistle-blower”) raises a concern about a risk, malpractice or relevant wrongdoing which affects others such as clients, suppliers, other workers, the organisation or the public interest. This policy applies to everyone who carries out work (in line with the broad definition of ‘workers’ in the Protected Disclosures Act 2014) for IHREC in Ireland.

3.0 Purpose

The overarching aim and purpose underlying this Protected Disclosures Policy is to ensure that:

- All workers are protected from victimisation, harassment or disciplinary action as a result of any disclosure, where the disclosure is made in good faith and is not made maliciously or for personal gain. Where disclosures are made in the public interest, workers will have statutory protection in Ireland under the Protected Disclosures Act 2014.
- Any disclosures will be investigated fully.
- The identity of the whistle-blower will be protected at all stages in any internal matter. While the organisation can provide internal anonymity, it cannot guarantee this will be retained if external legal action flows from the disclosure. The organisation is not accountable for maintaining anonymity where the whistle-blower has told others of the alleged misdemeanour.

4.0 The Protected Disclosures Act 2014

4.1 'Protected Disclosure' defined

A Protected Disclosure is defined in the Protected Disclosures Act 2014 as a disclosure of relevant information related to wrongdoing made by a worker in the manner specified under the Act.

The Act provides for a stepped disclosure regime whereby a worker must comply with certain requirements when making their disclosure to specific recipients for their disclosure to attract the protections contained in the 2014 Act. The stepped disclosure regime contains three distinct levels of disclosure requirements;

- a) The first step covers disclosures to the worker's employer (to which this policy applies), a Minister, and to a legal advisor in the course of obtaining legal advice,
- b) The second step is a disclosure to a prescribed person, and
- c) The third step is a disclosure in other cases other than to those recipients in the first and second steps.

It is not necessary for a discloser to make a disclosure via the first or second step disclosure channels before making a disclosure through the third step. There are however, more requirements that have to be satisfied in order for a disclosure to be considered a protected disclosure when made in accordance with the third step.

The Act defines a protected disclosure as "a disclosure of relevant information" made by a "worker" to;

- a) An employer or other responsible person - (Section 6)
- b) A prescribed person - (Section 7)
- c) The Minister – (Section 8)
- d) A legal advisor (Section 9), or –
- e) In certain circumstances to a person other than the above – (Section 10)

A "worker" under this act is defined as follows;

- Employees
- Contractors
- Consultants
- Former employees
- Temporary employees
- Interns
- Trainees

For the purposes of the Act, information is “relevant” if:

- In the reasonable belief of the worker it tends to show one or more ‘relevant wrongdoings’ and
- It came to the attention of the worker in connection with the worker’s employment.

“Relevant wrongdoing” is defined by Sections 5(3) to 5(5) of the Act and includes as follows;

- 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.

A protected disclosure relates to relevant information pertaining to a “relevant wrongdoing” which;

- Has occurred
- Is occurring, or
- Is about to occur.

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.

A worker 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. Workers are entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.

No worker will be penalised simply for getting it wrong, so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

4.2 Protected Disclosures made other than in accordance with this policy

The IHREC is committed to ensuring that all protected disclosures made under Section 6 are fully dealt with under this policy. In addition, it is acknowledged that workers within the IHREC have the right under the Act to make a protected disclosure other than in the manner as set out under Section 6 of the Act.

All workers are entitled to make a protected disclosure to a person/body other than in accordance with this policy as follows;

- a) Other responsible person;

A disclosure can also be made by a worker to another responsible person where the worker reasonably believes the relevant wrongdoing relates solely or mainly to that person's conduct or to something for which that person has legal responsibility will also be considered as a disclosure to the worker's employer.

- b) A Prescribed person/body

A protected disclosure may be made to one of the prescribed bodies listed in SI 339/2014 as amended by SI448/2015. In general these bodies have regulatory functions in the area which are the subject of the allegations and a worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the remit of that body.

The worker must believe that the information disclosed, and any allegation contained in it are substantially true.

- c) A Minister of the Government

If a worker is or was employed in a public body, they may make a disclosure to the Minister on whom any function related to the public body is conferred or imposed by or under any enactment.

- d) A legal adviser

The 2014 Act allows a disclosure to be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in Section 6 of the Trade Union Act, 1941).

- e) Another external person, subject to the following conditions;

- That the worker making the disclosure reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
- That the worker making the disclosure is not making the disclosure for personal gain,
- That in all the circumstances of the case, it must be reasonable for the worker to have made the disclosure,
- That the worker reasonably believes that he/she will be subjected to the penalisation by his/her employer if he/she makes the disclosure to his/her employer, to a prescribed person, or to a Minister, if there is no prescribed person,
- That the evidence relating to the relevant wrongdoing will be concealed or destroyed if the worker makes the disclosure to his employer,

- That the worker previously made a disclosure of substantially the same information to his employer, to a prescribed person or to a Minister in compliance with the Act, and
- That the relevant wrongdoing is of an exceptionally serious nature.

4.3 Personal Complaint Vs Protected Disclosure

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 IHREC itself or to the public at large, as opposed to personal complaints.

These procedures are not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures. A protected disclosure involves the disclosure of information which, in the reasonable belief of the worker making the disclosure, shows that one or more of the following relevant wrongdoings has been committed or is likely to be committed:

- Unlawful or improper use of public funds or resources
- Financial misconduct or fraud
- Corruption, bribery or blackmail
- Failure 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
- Endangerment of the health or safety of any individual
- Damage to the environment
- The commission of an offence
- Miscarriage of justice
- Gross negligence or gross mismanagement by public bodies
- The concealment of any of the above.

The list above is not exhaustive. A full definition of wrongdoing can be found in Section 5(3) of the Act at <http://www.irishstatutebook.ie/2014/en/act/pub/0014/index.html>.

All employees are encouraged to raise genuine concerns about possible wrongdoing at the earliest opportunity, and in an appropriate way.

If a worker makes a disclosure and feels they have been penalised as a result of making a disclosure, they have the right to make a complaint to an Adjudication Officer of the Workplace Relations Commission. Matters relating to personal grievances are dealt with through existing IHREC policies. For example, where a worker feels that there has been a breach of their own terms and conditions, this type of complaint would be dealt with under the Grievance Procedure. Alternatively, a worker may feel that they are being bullied or harassed by a colleague. This type of complaint should generally be dealt with under the Dignity at Work procedure.

5.0 How to make a Protected Disclosure

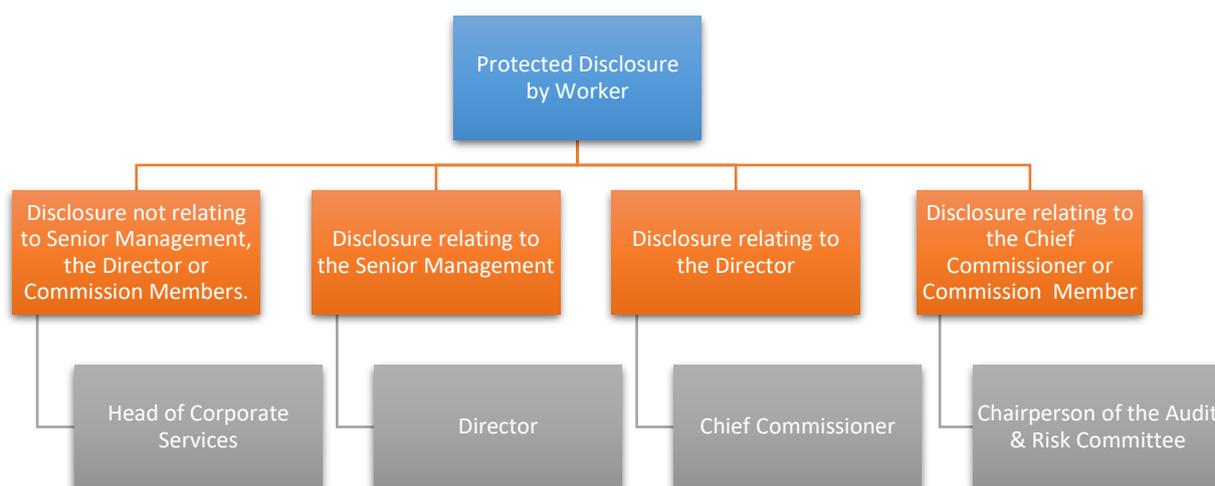
Where a 'worker', as defined by the Act, intends to make a protected disclosure, the following procedure should be followed:

- a) Workers wishing to discuss a potential protected disclosure should contact the Protected Disclosures Recipient who is the Head of Corporate Services on 01 858 9601 or by email at nkelly@ihrec.ie. The Head of Corporate Services may delegate this function to an authorised officer where appropriate; this will be advised to the person making the disclosure.
- b) Disclosures relating to the Senior Management of the IHREC should be made to the Director on 01 8589601 or by email labond@ihrec.ie.
- c) Disclosures relating to the Director should be made to the Chief Commissioner.

Alternatively, all the above can be written to at:

- Irish Human Rights and Equality Commission, 16-22 Green Street, Dublin 7, D07 CR20.

Postal disclosures can be made anonymously, should the individual not wish to disclose their identity.



The disclosure should be submitted, to the appropriate person as above, on the template at Appendix A and should include the following at a minimum:

- Date submitted
- Subject
- Detail of wrongdoing
- Detail of whether the wrongdoing was previously raised and to whom
- Confidential contact details of the discloser (as appropriate).

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

Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. All workers should do is disclose what they consider to be an alleged wrongdoing based on a reasonable belief that it has, is or will occur.

The term 'reasonable belief' does not mean that the belief has to be correct. A worker is entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.

No worker will be penalised simply for getting it wrong, so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

6.0 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).

Anonymous disclosures made by workers are not excluded from the protection of the 2014 Act. Reports or concerns expressed anonymously will be acted upon to the extent that this is possible given the constraints in obtaining further information on the alleged wrongdoing when it is received anonymously.

The IHREC, therefore, encourages workers to identify themselves in making a report to facilitate a full investigation, where it is deemed such an investigation is warranted. Workers should note, however, that important elements of the Policy (e.g. keeping the discloser informed and protecting a discloser from penalisation) may be difficult or impossible to apply unless the worker is prepared to identify themselves. Also, a worker cannot obtain redress under the 2014 Act without identifying themselves.

7.0 Protected Disclosure Process

7.1 Receipt of Disclosure

In all instances, where a protected disclosure report has been made under this policy, a record will be made of its receipt and a file opened by the Protected Disclosure Recipient. Throughout the Protected Disclosure process all reasonable steps will be taken to avoid disclosing to another person any information that might identify the person who made the disclosure.

7.2 Preliminary Evaluation

On receipt of a Protected Disclosure report, a preliminary evaluation will be conducted by the appropriate person (as identified in 5.0), to determine whether the matter meets the requirements of the legislation. The preliminary evaluation process involves an assessment to determine whether the matter should be treated as a protected disclosure.

It might be necessary, as part of the preliminary evaluation process, to differentiate between protected disclosures and personal complaints/grievances. In some instances, information provided may involve a personal complaint/grievance and protected disclosure matters. In such circumstances, it will be necessary to separate the different elements of the complaint/disclosure and determine whether any specific disclosure of information relating to a relevant wrongdoing has taken place.

Matters disclosed may be investigated by IHREC Internal Audit as directed by the Protective Disclosure Recipient (Head of Corporate Services). Where the matter involves members of the Senior Management Team it may be independently investigated and overseen by the Director or the Directors nominee. Matters which involve the Director may be independently investigated and overseen by the Chair of the Audit and Risk Committee or the Chairperson's nominee. In all other cases the investigation will be overseen by the Protected Disclosure Recipient (PDR).

Where the matter is found not to meet the criteria of legislation,¹ the PDR, or the Director or the Chairperson of the Audit and Risk Committee will inform the discloser of the reasons why and may advise an alternative route if appropriate.

In cases where the preliminary evaluation identifies the matter as meeting the criteria of legislation, a full investigation will be carried out.

7.3 Investigation

If the preliminary evaluation establishes that the matter meets the criteria of a protected disclosure as set out in the legislation, an investigation will be initiated as follow;

- Matters may be investigated by the Internal Auditor.
- Matters which involve the Senior Management Team may be independently investigated and overseen by the Director or the Director's nominee.
- Matters which involve the Director may be independently investigated and overseen by the Chairperson of the Audit and Risk Committee or the Chairperson's nominee. In all other instances the investigation will be overseen by the PDR.

It is important to note that some matters may be of such seriousness, that the investigation will be more appropriately carried out externally or by professional experts in a particular area. In cases where matters arising present suspicions of an offence or offences having been committed, there is a Statutory Obligation on the Internal Auditor (per Criminal Justice, Theft and Fraud Offences Act, Section 59) to inform An Garda Síochána of any such suspicions.

Where investigations are carried out by persons other than the PDR, the worker reporting the concern will be notified of the name of the investigating person. In all investigations, the worker may be asked to provide additional assistance if required.

In order to ensure that the principles of fair procedure and natural justice are complied with during the investigative process, the PDR will be advised in writing of any disclosures where the disclosure has been to any person other than the PDR. The PDR will not disclose the identity of the person who has made the disclosure unless required to do so under Section 8.0.

Investigations will include interviews with all appropriate individuals, as deemed by the investigator. Statements from all parties will be recorded in writing and a copy given to the person making the statement for confirmation of its accuracy. Interviewees will be advised that they are entitled to be accompanied by a colleague or trade union representative or other support person, should they so wish.

¹ Protective Disclosure Act 2014, Section (5) (3) to (5) (5)

The worker who has made the disclosure will be provided with regular feedback for purposes of reassurance that the investigation is being progressed. In line with due process and fair procedure, the IHREC will ensure that any information provided will not breach the legal rights of any person who is subject to the investigation.

All investigations will be carried out confidentially and third parties will not be notified about the investigation unless necessary in the interests of the investigation or as required in law.

At the conclusion of the process the worker who has made the disclosure will be informed of the outcome of the investigation.

It is important to note that the protections of the legislation remain in place even if the findings of the investigation conclude there is no case to be answered. Therefore, it is imperative that the PDR or other investigating officers maintains written records of actions and decisions taken. This information will be held safely and securely by the PDR in accordance with Data Protection legislation.

8.0 Confidentiality

The IHREC will take all reasonable steps to treat disclosures made in accordance with this Policy in a confidential and sensitive manner. The IHREC will not disclose information that might identify the worker who made the disclosure unless it is required by law or necessary for the effective investigation of the relevant wrongdoing. In order to protect the discloser, the PDR will advise the discloser of the need for their discretion regarding the matter.

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

- a) The disclosure recipient shows that he or she took all reasonable steps to avoid so disclosing any such information
- b) The disclosure recipient reasonably believes that the discloser does not object to the disclosure of any such information
- c) The disclosure recipient reasonably believes that disclosing any such information is necessary for:
 - The effective investigation of the relevant wrongdoing concerned,
 - The prevention of serious risk to the security of the State, public health, public safety or the environment, or
 - The prevention of crime or prosecution of a criminal offence, or
 - The disclosure is otherwise necessary in the public interest or is required by law.

Where it is necessary to disclose the identity of the discloser, the PDR should contact the discloser and, where possible, gain the consent of the discloser, prior to any action being taken that could identify them.

Where it is decided that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser should be informed of this decision. The discloser may request a review of

this decision (as per S.12) and a review should be carried out, where practicable before any such disclosure of information is made.

All reasonable steps will be taken to protect the identity of the discloser, except as set out in points (a) to (c) in this section. Workers who are concerned that their identity is not being protected should notify the person investigating their disclosure. Such notifications will be assessed and/or investigated and appropriate action taken where necessary.

9.0 Data Protection

Whenever a protected disclosure is made, the PDR must consider the rights of any person named in the report in keeping with Data Protection legislation.

10.0 Workers Protections/Safeguards

The IHREC is committed to ensuring that the provisions of Part 3 of the Act (Protections) are fully complied with in all cases where protected disclosures are made.

- A worker who makes a disclosure and has a reasonable belief of wrongdoing will not be penalised for having made a disclosure.
- Workers who penalise or retaliate against those who have raised concerns under this policy will be subject to disciplinary proceedings.
- Workers are not expected to prove the truth of an allegation. They must however, have a reasonable belief that there are grounds for their concern.
- It should be noted that appropriate disciplinary action may be taken against any worker who is found to have raised a concern or made a protected disclosure in the absence of a reasonable belief that the information tended to show wrongdoing.
- Any employee who raises genuine concerns of wrongdoing will not be at risk of losing their employment or suffering any form of penalisation as a direct result of making a protected disclosure. In order to gain the protections afforded by the Act the worker must make a disclosure in the manner set out in the Act. Penalisation means any act or omission that affects an employee to their 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.

A discloser, who believes that they are being subjected to penalisation as a result of making a disclosure under this policy, should notify the Protected Disclosures Recipient immediately, who will cause the matter to be appropriately investigated. The procedures under this policy will apply to the allegations of penalisation.

11.0 Protection of the Rights of the Respondent

Where an allegation is made against an individual (the respondent), the principles of natural justice and fair procedures will be adhered to. The respondent will 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).

12.0 Timescales

Due to the very nature protected disclosures, which may involve internal investigations and/or the involvement of An Garda Síochána, it is not possible to lay down precise timescales for such investigations. The investigating officer should ensure that the investigations are undertaken as quickly as possible without affecting the quality and depth of those investigations.

The investigating officer, should as soon as practically possible, send a written acknowledgement of the concern to the discloser and thereafter report back to them in writing the outcome of the investigation and on the action that is proposed. If the investigation is a prolonged one, the investigating officer should keep the discloser informed, in writing, as to the progress of the investigation and as to when it is likely to be concluded. All responses to the discloser investigation should be in writing and sent to their home address.

13.0 Review of Decisions

In the event that the discloser is not satisfied with

- (a) the decision made to disclose the identity of the discloser
- (b) the outcome of any preliminary evaluation/investigation undertaken in respect of the Disclosure
- (c) the outcome of any preliminary evaluation/investigation in respect of any complaint of penalisation

The discloser can submit a request for review in writing to the nominated Commission Member, detailed below, who will oversee an independent evaluation of the matter. This decision will represent a final internal decision on the matter.

14.0 Review and Monitoring

This policy will be reviewed on a regular basis by the Audit and Risk Committee for effectiveness in its implementation and operation. This will be done in line with changes in statute law, relevant case law and other developments. Any revisions or modifications necessary will be made and communicated to all employees as soon as is reasonably practicable.

The Audit & Risk Committee will review a report on activity under this policy twice yearly.

15.0 Contact

Please see below current contact details of all identified individuals within this policy.

Staff can also access external independent impartial information from Transparency Ireland's 'Speak Up' helpline which has access to the Transparency Legal Advice.

Intended Recipient	Contact Details
Chair of Audit and Risk Committee	Mr. John Maher, Audit and Risk Committee jmaher1958@hotmail.com
Director	Laurence Bond, Director labond@ihrec.ie 01 858 9601
Head of Corporate Services	Mr. Niall Kelly, Head of Corporate Services n.kelly@ihrec.ie 01 858 9601
Chief Commissioner	Chief Commissioner Irish Human Rights and Equality Commission, 16-22 Green Street, Dublin 7, D07 CR20
Nominated Reviewer of Decisions	Nomination of Commission Member pending

16.0 Policy Maintenance

Policy update and revision	
Policy Name/Number	Protected Disclosures (Whistle-Blowing) Policy
Revision number	1.1
Date of creation	2016
Policy owner	Niall Kelly, Head of Corporate Services

Approver:	Commission
Date of approval	23 rd June 2020
Date of next review	2021

Appendix A: Protected Disclosures Reporting Form

The Irish Human Rights and Equality Commission (IHREC) welcomes the reporting of disclosures under its Protected Disclosure Policy.

The Protected Disclosure Policy is part of the IHREC approach to good governance as it seeks to deter, prevent and detect fraud and other significant wrongdoings.

Before completing this form, you should:

- a) Consider whether the Protected Disclosures Policy is the appropriate policy under which to report your concern (matters of private interest may be reported under grievance or bullying and harassment policies through Corporate Services)
- b) Ensure that the report is being made in relation to a matter that you have reasonable grounds to be concerned about.

Reports should be submitted to an appropriate person as outlined in Section 5.0 of the IHREC's Protected Disclosures Policy.

Name of Worker reporting the concern: (Anonymous reports will be considered but are not encouraged)		
Confidential contact number:		
Home Address:		
(Private) Email Address:		
Details of alleged wrongdoing including dates, if applicable: (Care should be taken to only include the name(s) of individual(s) directly relevant to the report)		
Has the alleged wrongdoing being reported previously: (if so please specify when and to whom)		
Date:		
Signature:		