

# **PROTECTED DISCLOSURES ACT 2014**

## **Law Reform Commission**

### **General Policy and Procedures for the Making of Protected Disclosures**

**MARCH 2023**

*This policy replaces the policy dated July 2017 and has been prepared in accordance with the provisions of the Protected Disclosures Act 2014 (the Act) as amended by the Protected Disclosures (Amendment) Act 2022 (see the Revised version [Untitled \(lawreform.ie\)](#)). This policy must be read in conjunction with the Act. Nothing in this policy can override the provisions of the Act.*

## **1. Introduction**

This policy is put in place to ensure compliance by the Commission with the Protected Disclosures Act 2014 (the Act). This Act provides a statutory framework within which employees and certain others 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 if they are penalised or suffer any detriment from doing so.

Protected disclosures can assist in uncovering wrongdoing within an organisation and this can prevent accidents, financial issues, criminal offences and regulatory breaches. Disclosures of wrongdoing can also result in early detection and remediation of issues and limit the reputational damage to the Commission and its staff. The Commission is committed to preserving the highest standards of integrity, transparency, probity and accountability, and recognises that all employees play a key role in achieving these aims. Wrongdoing such as corruption or malpractice, or the concealing of these, can have a devastating effect on the reputation of the Commission, the outcome of our processes, and the organisational culture in the Commission.

Members of the Commission staff and others may become aware when someone working in or for the Commission, or in some relationship with the Commission, is involved in improper practices. Those who become aware of potential issues may be wary of reporting concerns because they fear a potential negative impact.

The Commission is putting in place this updated policy to ensure there are formal procedures for reporting concerns and that staff members and certain others (see below, all referred to as workers) know that they can safely make such disclosures. The Commission will support workers who make such disclosures that they reasonably believe demonstrate a suspected wrongdoing. Safeguards will be put in place to deter mischievous reporting.

## **2. Purpose**

The purpose of this policy is to encourage workers, former workers, and certain others connected to the Commission to make a disclosure in respect of significant matters and to provide protections for the person making the disclosure. It also outlines how disclosures may be made.

This policy will apply to all major concerns a worker may have regarding any aspect of the Commission's activities. However, it does not apply to issues solely concerning a worker, which are covered by Grievance and Dignity at Work policies.

This policy aims to protect workers from penalisation where they make a disclosure of information that comes to their attention in connection with their roles in the Commission. A protected disclosure under this policy involves the disclosure of information which a worker reasonably believes demonstrates a suspected wrongdoing or danger in the Commission. A protected disclosure may include:

- 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 from the staff member's contract of employment);
- that a miscarriage of justice has occurred, is occurring or is likely to occur;
- that the health and safety of a person 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 improper use of funds and/or resources in the Commission has occurred, is occurring, or is likely to occur;
- that an act or omission by the Commission (or on behalf of the Commission) is oppressive, discriminatory, grossly negligent or constitutes gross mismanagement;
- that a breach of EU law has been or is likely to be committed;
- that information tending to show any matter falling within any of the above points has been, or is being, or is likely to be concealed or destroyed.

If a worker has concerns related to suspected wrongdoing or danger affecting any Commission activities s/he should report it under this policy. The wrongdoing must have come to the worker's attention in connection with his or her work in the Commission (a disclosure will not be protected if it relates to matters in someone's personal life outside and unconnected to the Commission).

Personal grievances between a discloser and the Commission or a co-worker that solely affect the discloser are not protected by the Act. Such matters will be dealt with under the **Grievance and Dignity at Work** procedures.

### 3. Scope

The policy applies to workers (defined in the Act in section 3). They include:

- staff members including former staff members
- agency workers
- staff of other organisations on loan to the Commission
- contractors
- trainees
- interns and volunteers
- Commissioners
- job applicants

The policy is designed to:

- encourage the reporting of suspected wrongdoing as soon as possible in the knowledge that concerns expressed will be taken seriously and an investigation conducted if appropriate;
- provide guidelines on how to report issues;
- ensure that workers know that they can raise genuine concerns without any fear of reprisals.

The Commission has existing management structures and internal controls and has mechanisms in place to highlight irregularities. However, if for any reason, the existing structures cannot be used, then this policy should be used. The Act involves a stepped disclosure regime with varying evidential thresholds required for each stage. Issues can be reported internally without the provision of evidence; workers are encouraged to raise concerns as soon as possible (the reasonable suspicion of a wrongdoing is acceptable without the need for supporting evidence).

Issues raised under other procedures (such as Health and Safety, Online Safety) may also be considered to be a protected disclosure and workers may also use the reporting procedures set

out it this policy.

## **4. Reporting Procedures**

The Fulltime Commissioner has overall responsibility for this policy and for reviewing the effectiveness of actions taken in response to concerns arising under this policy.

### **4.1 Normal Disclosure Routes**

A worker should raise any concerns with his or her line manager or the senior manager for his or her area.

If for any reasonable grounds the worker does not wish to report the concern to his or her line manager or senior manager, the worker may escalate it to:

- any Assistant Principal or Principal Officer level manager;
- the Head of Administration/ HR Manger (Brid Rogers),
- the fulltime Commissioner (Richard Barrett).

### **4.2 Alternatives: Disclosures to Prescribed Persons or Protected Disclosures Commissioner (Ombudsman)**

In most cases workers should not find it necessary to make disclosures to anyone externally; however the Commission accepts that workers can safely and properly contact an appropriate external body, and there is no requirement to make the initial report internally to the Commission. If a worker does not want to report to the Commission or a report to the Commission has not worked, he or she can report to a prescribed person. A list of prescribed persons can be found at [www.gov.ie/prescribed-persons](http://www.gov.ie/prescribed-persons) and the Office of the Comptroller and Auditor General would seem to be a suitable regulator in relation to the Commission. The contact details for the Office of the C&AG are:

The Comptroller and Auditor General  
Office of the Comptroller and Auditor General  
3A Mayor Street Upper  
Dublin 1  
D01PF72  
Tel: +353 1 863 8600  
Email: [privatesecretary@audit.gov.ie](mailto:privatesecretary@audit.gov.ie)  
Web: <https://www.audit.gov.ie/en/>

In some circumstances it might be appropriate and required to report to an external body such as An Garda Síochána.

A worker can also report to the Protected Disclosures Commissioner who will usually refer the report to a suitable regulator for acknowledgement, follow-up and feedback. The contact details for the Office of the Ombudsman and Protected Disclosures Commissioner are:

The Protected Disclosures Commissioner  
Office of the Ombudsman  
6 Earlsfort Terrace  
Dublin 2  
D02 W773.  
Tel: +353 1 639 5600  
Email: none listed on the website

Web: <https://www.ombudsman.ie>

### **4.3 Alternatives: Disclosure to the Minister or public disclosure**

If all other options fail, a worker may make a disclosure to the Minister with responsibility for the Commission, the Taoiseach, or make a public disclosure, but more stringent conditions apply to qualify for protection (see the Act, sections 8, 10). Check the Act or get advice before reporting a concern externally, so as not to lose the protection of the Act.

## **5. Making a Disclosure**

All disclosures should, where possible, be made in writing, and may be made to the appropriate person (above), or failing that to [protecteddisclosures@lawreform.ie](mailto:protecteddisclosures@lawreform.ie) – this is a secure email address which can only be seen by the Fulltime Commissioner.

It is sufficient for the discloser to state that he/she has a reasonable belief in relation to a past, present or future wrongdoing; however, it would be helpful if the discloser could include any of the information below that he/she is aware of in relation to his/her concern.

Any reports setting out concerns should be factual and may include the following points, where any of this information is known, in relation to a wrongdoing that has occurred, is occurring or is likely to occur:

- what has occurred (or is thought to have);
- when it occurred and whether it is ongoing;
- where it occurred;
- who was involved;
- has the Commission been put at risk or suffered a loss;
- has it happened before;
- has it been raised to anyone, either in the Commission or externally, and details of this;
- are there any other witnesses;
- is there supporting information or documents;
- how the matter came to light.

If a disclosure is made verbally it will be documented by the recipient and the record will include the discloser's name in addition to the information outlined above (where available).

In the event of such a disclosure being made:

- the worker must have a reasonable belief that the matters being disclosed are substantially true;
- the matters being disclosed came to the attention of the worker in a work-related context.

## **6. Confidentiality**

We hope that workers will be able to convey their concerns openly under this policy. The Commission will take all necessary steps to protect the identity of the person reporting these concerns and any other witnesses. The recipient and any other person to whom the disclosure is referred are obliged not to disclose to another person any information that might identify the person who made the disclosure, and must keep the reporting and investigation process confidential where possible.

To ensure confidentiality, it is also important that the discloser limit the persons he or she informs of the disclosure to such person(s) as must be informed, and no others.

The identity of the relevant person may need to be disclosed however:

- for the effective investigation of the disclosure;
- to prevent serious risk to the security of the State, public health, public safety or the environment;
- for the prevention, investigation or prosecution of a crime;
- where disclosure is necessary in the public interest or is required by law.

The principles of natural justice do not require the identification of the name of the worker who reports a possible wrongdoing in order to protect the rights of the person against whom the allegation has been made. Not all reports involve allegations against named individuals. Where they do, the rights of the person against whom an allegation of wrongdoing has been made will be protected and that person will be dealt with fairly and consistently.

Where it is deemed that reports of wrongdoing require an investigation, a preliminary examination may be conducted to establish if there is any basis to the report. Reports that on a preliminary analysis do not demonstrate any wrongdoing will not be subject to a full investigation and the worker who made the allegation will be advised accordingly.

If it gets to the stage where it is required to discuss the allegation with the subject or seek information from him/her, he/she will be given the details of the allegation and given the opportunity to respond and contest the allegation. This will not necessarily require the identity of the worker who made the allegation to be revealed. The person against whom the allegation is made (the person named) will be informed in writing that:

- an allegation has been made against him/her;
- the disclosure has been received and is being formally investigated by a named individual to establish the facts;
- no conclusions will be drawn until the facts have been established;
- the person named is expected to assist the investigator as far as is reasonably possible;
- the investigator wishes to interview the person named at a specific time and place;
- the person named may have a person of his or her choice present at the interview;
- the person named has a right to make a statement in respect of the allegation, orally or in writing;
- as far as possible, the confidentiality and privacy of the person named will be respected.

Where action is taken on foot of a disclosure that could lead to the identification of the discloser, the discloser will be consulted where possible with a view to obtaining informed consent (this will include any disclosure to an external party). If it becomes clear that the confidentiality of the discloser cannot be ensured, the discloser will be advised of the supporting strategies being put in place to assist him or her.

It will be a disciplinary offence for the recipient of the disclosure to disclose the discloser's identity or information that may lead to him/her being identified unless there is a good reason for doing so. If the discloser suffers any loss as a result he/she may take actions as outlined in the Act. Breaching confidentiality is also an offence.

All records of disclosures will be securely maintained in order to comply with the requirements of

confidentiality under the Act and in compliance with the Data Protection legislation.

## **7. Anonymous Disclosures**

The person making the disclosure is encouraged to identify him/herself wherever possible. The decision whether to investigate anonymous disclosures is at the discretion of the Commission, taking into account the seriousness of the issue raised, the credibility of the concern, and the capacity of the Commission to investigate an anonymous allegation. In order for the Commission to ensure that workers can avail of protections available under the Protected Disclosures Act, the Commission would need to be aware of their identity. Anyone making an anonymous protected disclosure in accordance with the Act who is later identified will benefit from the protections in the Act.

## **8. Assessment, Investigation and Outcome**

### **8.1 Role of Designated Person**

The Act, section 6A provides for a Designated Person to be responsible for ensuring that the reporting channel operates correctly and that the protected disclosure is correctly handled, by ensuring acknowledgment, assessment and feedback in a timely manner. The Commission's Designated Person is the Head of Administration, unless that person is the subject of the disclosure. In that event, the Designated Person is the Fulltime Commissioner.

Upon receipt of any written disclosure under this policy, the recipient will pass the information on to the Designated Person. The Designated Person in consultation with the Fulltime Commissioner if relevant will be responsible for the assessment and investigation of all disclosures in a timely and appropriate manner.

### **8.2 Assessment of Disclosure**

The Designated Person will carry out or will arrange for an initial assessment of the disclosure to be carried out to determine whether it falls within the scope of this policy and whether it is necessary to carry out an investigation into the disclosure. This assessment will be based on an appropriate risk prioritisation of the requirement for investigation and the nature and extent of the investigation that should be carried out (ranging from a detailed and extensive investigation of serious wrongdoings to less formal approaches for disclosures that are assessed to relate to less serious wrongdoings).

The Designated Person will communicate the outcome of the assessment to the discloser (including whether the matter will be investigated further, and what action has been taken, or whether no action will be taken) and to the recipient (if relevant and appropriate).

### **8.3 Investigation**

If it is determined that an investigation will be held, the scope and terms of reference of the investigation will be determined prior to the investigation. The Designated Person will appoint a senior manager from within the Commission (who was not previously involved at assessment stage) to conduct the investigation. Some matters of such seriousness may require that the investigation will have to be carried out professionally by a subject matter expert or may need to be reported to and investigated by An Garda Síochána. In some other cases, the Designated Person may also appoint an external third party to investigate the matter, in circumstances where the third party has relevant and necessary specialised knowledge of the subject matter. The Designated Person will update the discloser periodically (if possible) on the progress with the investigation.

The discloser may be required to meet with the investigator and provide further information. The investigator will report on his/her investigation. Investigations will be carried out in an impartial manner and fully consistent with due process. The confidentiality of both the discloser and the person against whom the allegation was made must be protected.

The investigator's report will be sent to the Designated Person who will determine what, if any, action should be taken in consultation with the Fulltime Commissioner if relevant. The Designated Person will keep the discloser informed of the progress of the investigation and the likely timescale.

Sometimes the need for confidentiality, or to facilitate a fair and comprehensive investigation, may prevent the Designated Person from passing on specific details of the investigation. The discloser is required, as part of this policy, to treat any information passed to him/her as part of this process as strictly confidential and not to reveal any such information to a third party.

#### **8.4 False allegations**

If the Designated Person concludes that the worker has made a false allegation, deliberately or maliciously or with a view to personal gain, he/she may be subject of disciplinary action in accordance with the Disciplinary Code. In such circumstances the worker would not have any protection under the Act. Such false allegations, in addition to the impact on the persons to whom they relate, are very damaging to the objectives of the Act, and will be treated as a very serious disciplinary matter. A person against whom false allegations are made also has a remedy in tort against the discloser for defamation and under section 13A of the Act.

#### **8.5 Reports to Commission**

In the case of a disclosure where it is determined by the Designated Person in consultation with the Fulltime Commissioner (if relevant) that there is no prima facie case to answer, a summary of the disclosure will be reported to the Commission President.

Following any investigation, a written report will be submitted to the Fulltime Commissioner and the other Commissioners, containing the following information:

- a description of the disclosure and the findings of the investigation;
- the effect the disclosure had on the Commission, if any;
- the means of perpetrating the malpractice or impropriety;
- the measures taken to prevent a recurrence;
- the action required to strengthen further responses under this policy;
- a conclusion as to the way forward;
- whether any report has been made, or is required to be made, to any third party;
- any other relevant information.

### **9. Protection and Support for Persons Making a Disclosure**

The Commission aims to encourage openness and will support workers who raise concerns under this policy, even if they turn out to be mistaken. The Commission will not tolerate any penalisation of workers who make a report of possible wrongdoing based on a reasonable belief and will treat any acts of penalisation or attempted penalisation as a disciplinary matter. Note that a worker suffering penalisation may also take separate legal action under the Act.

Workers who make disclosures under this policy will not suffer any detrimental treatment as a



result, including:

- suspension, lay-off or dismissal;
- demotion or loss of promotion opportunities;
- transfer of duties, change of location of work, reduction in wages/fees, or change to working hours;
- imposition or administering of any discipline, reprimand or other penalty (including financial penalty);
- unfair treatment;
- coercion, intimidation or harassment;
- discrimination, disadvantage or unfair treatment;
- injury, damage or loss;
- threat of reprisal;
- refusal of training
- any other unfavourable treatment connected with raising a concern.

If a discloser believes that s/he has suffered any such detrimental treatment, s/he should inform his or her line manager or senior manager. It is the responsibility of the manager notified of such claims to take the necessary action in relation to this, including referral to the Designated Person. In incidents where the person's manager, relevant senior manager or Head of Administration is involved in the alleged victimisation, the worker should report the matter to the Fulltime Commissioner.

Workers must not threaten or retaliate against anyone who has made a disclosure under this policy. A person who is involved in such conduct will be subject to disciplinary action. Penalisation is now an offence under section 14A, as is breach of confidentiality (which also gives rise to a right of action in tort under section 16) and bringing vexatious proceedings against the discloser or another person connected or involved.

If it is determined that penalisation is taking place then all possible steps to protect the worker and stop the penalisation will be taken by the Designated Person and/or other appropriate persons.

The disclosure of wrongdoing does not confer any projection or immunity on a worker in terms of their involvement in that wrongdoing.

If a person causes detriment to another person because the other person or a third person has made a protected disclosure, the person to whom the detriment has been caused has a right of action in tort against the person by whom the detriment is caused under section 13 of the Act. (A person may not both pursue this option and make a claim for redress under the Unfair Dismissals Act 1977 to 2007.) On the other hand, a person who suffers damage as a result of a protected disclosure where the person reporting knowingly reported **false** information also has a right of action in tort against the discloser under section 13A of the Act. The discloser may also be liable to being sued for defamation.

## **10. Protection and Support for Persons Against Whom an Allegation has been made**

The Commission will protect and support any worker against whom an allegation has been made at all times during the investigation process. As set out previously in this policy, he/she will be provided with full information on the allegation against him/her and be given every opportunity to respond fully to such allegations. He/she can opt to be accompanied at any interviews (and other Commission staff will be given the time to attend such meetings should the person against whom any allegation has been made opt to be accompanied to meetings by a colleague). He/she will also

be able to receive advice on the policy from the Commission contact person, or any other specified member of senior management not involved in the investigation. He/she will also have recourse to the Employee Assistance Service and may make appointments to attend within working hours. No conclusions will be drawn until the investigation, and any appeals process, have been exhausted.

## **11. Review**

If an individual is not satisfied with the outcome of the investigation, how the disclosure has been handled, or how any alleged penalisation has been addressed, he or she may request a review. If the Fulltime Commissioner is satisfied that no further action is required, he or she may refuse the request. In the event that the Fulltime Commissioner decides to grant the request, the review will be conducted by an independent reviewer (with no involvement in the initial investigation) appointed by the Fulltime Commissioner. The conduct of such a review or its refusal does not preclude the discloser from reporting his/her concerns elsewhere in accordance with the provisions of the Act.

In the event that the Fulltime Commissioner is the Designated Person, any decisions in respect of review will be made by the Commission President.

## **12. Reporting**

The Designated Person will maintain a record of all disclosures received and investigations conducted under this policy. An annual report, not identifying any persons involved, will issue to the Commissioners and Minister for Public Expenditure, NDP Delivery and Reform by 1 March each year in respect of the preceding year and will include information on:

- the number of protected disclosures made;
- the number of investigations opened;
- the number of investigations closed and their outcomes and decisions taken;
- any estimated financial damage and any amounts recovered.

This information will also be published on the Commission's website by 31 March each year in respect of the preceding year.

## **13. Training and Awareness**

All staff members are made aware of this policy (the policy is available on the office Intranet, and is linked from the Protected Disclosures page on the website). The policy will be brought to the attention of all new staff as part of their Induction process. Managers, and those responsible for conducting investigations, will be provided with additional specialised training to help them deal with issues arising out of investigations into disclosures.

## **14. Contact Points**

If you wish to discuss any aspect of this policy you can contact Alma Clissmann (aclissmann@lawreform.ie).

## **15. Policy review**

This policy will be kept under review. The policy will also be reviewed on receipt of any updated Guidance from Government.

## Appendix

### Protected Disclosure Options

