

Protected Disclosures Act 2014

Law Reform Commission

General Policy and Procedures

For the Making of Protected Disclosures

July 2017

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1. Introduction

The Law Reform Commission, the full-time Commissioner, the Head of Administration and the Commission's Management Committee are strongly committed to ensuring that the Commission's culture and work environment are such that any member of staff is encouraged and supported in "speaking up" on any issue that may impact adversely on the Commission's ability to carry out, properly and fully, all its roles and responsibilities under the *Law Reform Commission Act 1975* to the high performance standard required under the 1975 Act and under any relevant governance codes and policies.

Consistent with existing good practice and relevant policies it is expected that any appropriate issue raised by a member of staff with their line manager relating to a matter connected to the conduct of the business of the Commission will be dealt with professionally and appropriately. This is essential to ensuring that all significant risks arising for the Commission are identified and effectively managed. In addition, any member of staff appropriately raising any issue of concern will not be disadvantaged for doing so.

This should be the case irrespective of whether the issue falls under this policy and procedures document or not.

This policy and procedures document relates to protected disclosures as defined in the *Protected Disclosures Act 2014*.

2. About this Policy

Section 21 of the *Protected Disclosures Act 2014* (the 2014 Act) relates to the provision of internal procedures for protected disclosures made by workers employed by public bodies and provides:

- Every public body shall establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures;
- The public body shall provide to workers employed by the body written information relating to the procedures established and maintained under section 21 of the 2014 Act.

The aims of this policy are:

- To encourage all staff, both past and present, to report Protected Disclosures as soon as possible, in the knowledge that their concerns will be taken seriously and investigated, where appropriate, and that their confidentiality will be respected in the manner provided by the 2014 Act;
- To provide all staff with guidance as to how to raise those concerns; and
- To reassure all staff that they can report relevant wrongdoings without fear of reprisal.

The procedures refer to internal reporting in accordance with section 6 of the 2014 Act only; and nothing contained in these procedures can act to deprive any person of his or her rights under the 2014 Act.

Persons considering reporting under these procedures should, however, be aware that a distinction must be drawn between voluntarily-made disclosures and legally-based mandatory reporting requirements. The procedures contained in this document do not absolve any member of staff from any such mandatory reporting requirement to which he or she may become subject. Failure to comply with a legally-based mandatory reporting requirement report may result in a breach of the law.

An individual may voluntarily raise concerns regarding a very broad range of issues in the workplace. Some of these may only affect that individual raising the concern, while others may have broader and wider implications.

It is to be expected that concerns in relation 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. Similar considerations apply to personal grievances or allegations relating to matters such as bullying which are not covered by this policy, and which remain to be dealt with under the relevant policies and procedures.

These procedures relate to the raising of concerns in relation to wrongdoings, which are outlined in Part 3, below, the disclosure of which is in the public interest.

This policy covers all staff as defined by the 2014 Act, which includes employees, consultants, contractors, trainees, part-time, full-time casual workers and agency workers.

A disclosure is protected when a person discloses relevant information through the appropriate channels as set out in the 2014 Act.

This policy may be revoked, replaced or amended at any time, and staff will be notified of any revised document. In particular, this policy will be reviewed following the issue of any guidelines/revised guidelines by the Department of Public Expenditure and Reform.

3. What is a Protected Disclosure?

A Protected Disclosure is defined in the 2014 Act as 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 prescribed in the 2014 Act.

The following matters are “relevant wrongdoings” under the 2014 Act:

- That an offence has been, is being or is likely to be committed;
- That a person has failed, is failing or is likely to fail to comply with any legal obligation, other than by one arising under the person’s contract of employment or other contract whereby the person 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 and 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 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 points has been, is being or is likely to be concealed or destroyed.

It should be noted that a matter is not relevant wrongdoing if it is the person or the Commission's function to detect, investigate, advise on or otherwise participate in legislative or remedial action relating to that wrongdoing and there has not been an act or omission on the part of the Commission.

4. Principles Underlying the Policy

Where an issue raised potentially falls within the scope of wrongdoing defined in the 2014 Act, the following principles will be applied by the Commission:

- the concern will be treated seriously and investigated where that is considered appropriate;
- where an investigation takes place, the identity of the member of staff raising the concern should be safeguarded insofar as this is practically possible;
- the person raising the concern will be advised on how the issue has been addressed including the outcome of any investigation; and
- the person raising the concern will not be disadvantaged in any way for having made the disclosure, even if no wrongdoing is identified providing the concern was based on a reasonable belief.

A person who has a reasonable belief in the occurrence of a serious wrongdoing in the Commission, and discloses that concern, will not be penalised or experience detriment for the making of that disclosure, even if no investigation subsequently takes place or, where an investigation does take place, the investigation finds that no wrongdoing occurred. This extends to any other person who provides information in relation to matters raised as a consequence of the disclosure.

It will be considered a serious disciplinary matter if anyone penalises, or threatens penalisation against, a member of staff for having made a protected disclosure.

If a staff member believes that he or she has been penalised for the making of a disclosure of wrongdoing in accordance with this policy they should inform the full-time Commissioner (in the case of legal researchers) or, as appropriate, the Head of Administration (in the case of administration staff) to seek redress.

As set out above, this policy applies to a disclosure of potential wrongdoing even if the concern is found to be incorrect providing it is made *on the basis of a reasonable belief*. However, a false disclosure made in the absence of a reasonable belief (for example, made recklessly, or for malicious or vexatious reasons) will not fall under the disclosures policy.

The making of a disclosure will not absolve the discloser from any disciplinary action, investigation or any other sanction in respect of any misconduct on his or her own part which has been disclosed.

5. Making a Disclosure

Any member of staff who has a reasonable belief in relation to one or more of the serious wrongdoings set out in Section 3 of this Policy, above, should disclose the relevant information in the first instance to the Director of Research (in the case of legal researchers) or the Head of Administration (in the case of administration staff).

If the disclosure relates to the Director of Research or the Head of Administration then the relevant information can be disclosed to the full-time Commissioner.

Where the discloser is the Director of Research or the Head of Administration he or she should make the disclosure to the full-time Commissioner.

If the disclosure relates to the full-time Commissioner or to any other member of the Commission, or to systemic high level wrongdoing, a disclosure can be made to Director General in the Office of the Attorney General, currently Contact details for the Director General are available from the Commission's Head of Administration.

The disclosure under this policy should preferably be made in writing to ensure that all the relevant information is made available at the time the disclosure is made. This will facilitate the assessment whether the disclosure warrants

investigation. The specific nature of the potential wrongdoing should be communicated at the time the disclosure is made.

While a disclosure may be made anonymously, it should be noted that the extent to which this policy or any investigative process can be applied and implemented is significantly restricted in the case of anonymous disclosures.

A staff member intending to raise a concern should not carry out an investigation outside of the normal scope of his or her duties with a view to seeking to confirm wrongdoing.

The staff member intending to make a disclosure should do so at the earliest possible opportunity after becoming aware of the potential relevant wrongdoing.

6. Receiving a Disclosure

The recipient of a disclosure under this policy, and any other person to whom the disclosure is referred in the performance of that person's duties, must take all reasonable steps to avoid disclosing to another person any information that might identify the person by whom the disclosure was made: see also Section 7 of this Policy, below.

The recipient of a disclosure should undertake an initial evaluation following which he or she will advise the discloser no later than 14 days after the receipt of the disclosure as to whether the matter requires an investigation. In the event that the recipient is of the view that any further investigation is not required the recipient should advise the discloser of his or her assessment and the basis for the assessment, insofar as is possible.

In the event that the discloser is not satisfied with a decision of the recipient not to pursue the matter further he or she may, if he or she so wishes, bring the matter to the attention of the full-time Commissioner or, where relevant, the chair of the Commission's Internal Audit Committee in the Office of the Attorney General stating that the matter has already been considered in accordance with the procedures in this Policy and outlining the reasons as to why he or she feels that the matter requires investigation.

In the event that the concerns are referred to a second recipient, that person will undertake an independent evaluation of the matter following which he or she will advise the discloser and the first recipient no later than 14 days after the receipt of the disclosure as to whether a more detailed investigation is considered appropriate. A decision of a second recipient not to pursue the matter will represent a final “internal” decision on the matter.

All persons who are in receipt of disclosures under this policy must advise the Head of Administration of the receipt of the disclosure, the nature of the information contained in the disclosure and the decision transmitted to the discloser. As far as is reasonable, this information should not identify the person by whom the disclosure was made: see also Section 7 of this Policy, below.

As it is not possible to know at the time whether a disclosure will subsequently be deemed protected under the 2014 Act, the recipient should keep a written record of his or her actions, including timelines, under this Section of the Policy.

7. Confidentiality

The 2014 Act provides that a person to whom a Protected Disclosure is made, and any person to whom a Protected Disclosure is referred in the performance of that person’s duties, shall not disclose to another person any information that might identify the person by whom the Protected Disclosure was made, except where:

- The person to whom the Protected Disclosure was made or referred shows that he or she took all reasonable steps to avoid so disclosing any such information;
- The person to whom the Protected Disclosure was made or referred reasonably believes that the person by whom the Protected Disclosure was made does not object to the disclosure of any such information;
- The person to whom the Protected Disclosure was made or referred reasonably believes that disclosing 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;
- The disclosure is otherwise necessary in the public interest or is required by law.

The Commission does not encourage staff to make disclosures anonymously. Proper investigation may be more difficult or impossible if the Office cannot obtain further information from the individual making the disclosure. It is also more difficult to establish whether any allegations are credible.

8. Investigation of a Disclosure

Where the recipient of a disclosure forms the view that a full investigation may be required, the matter must be referred to the full-time Commissioner who may arrange for investigation and report or who may refer the matter to an outside body. The fact of such an investigation will be reported to the Director of Research and the Head of Administration who both will also be advised of the outcome and any recommendations arising.

In so far as is possible, the discloser will be advised of the progress and outcome of the investigation.

Any internal investigation arising as a consequence of a disclosure will, as with all other internal investigations, be carried out in a manner which is fully consistent with existing investigatory procedures which embody the principles of natural justice and constitutional fair procedures.

It is not possible to lay down precise timescales or steps required for investigations, as this will depend on the nature of the issues raised. Without affecting the quality or depth of the investigation, all reasonable speed will be taken to bring any investigation arising from the making of a disclosure by a staff member to a conclusion as speedily as possible in all the circumstances of the case.

If, following the investigation into the matter, no wrongdoing is found to have occurred and the discloser is considered not to have had a reasonable belief in making the allegation of wrongdoing, the matter will be referred to the Head of Administration with a view to considering whether disciplinary proceedings ought to be pursued against the person concerned.

As it is not possible to know at the time whether the disclosure will subsequently be deemed protected under the 2014 Act, written records, including timelines, in relation to any investigation undertaken under this Section of the Policy should be maintained.

9. Review of this Policy

Responsibility for the review of the operation of this policy lies with the Management Committee of the Commission.

The Head of Administration, on a quarterly basis, shall provide to the Management Committee, and to the Commission's internal Audit Committee in the Office of the Attorney General, details of all disclosures brought to his or her attention. The Management Committee will review all outcomes related to this policy and as necessary, make any recommendations to or seek additional information from the Head of Administration or the full-time Commissioner as appropriate.

A Report will also be prepared and published pursuant to section 22 of the 2014 Act on an annual basis, which shall be published as part of the Commission's Annual Report made under the *Law Reform Commission Act 1975*. This will specify the number of disclosures made to the Commission under the 2014 Act (including, where relevant, that there were no disclosures), the actions taken in response to those disclosures and any other information as may be requested by the Minister for Public Expenditure and Reform under the 2014 Act.

The Report will be prepared in a form which does not enable the identification of the persons involved.

The Report in relation to a particular year will be published not later than the 30 June the following year.

10. Further information

This Policy document will be reviewed and updated following the issue of Guidelines by the Department of Public Expenditure and Reform under section 21 of the 2014 Act in relation to the establishment and maintenance of internal procedures for the making of protected disclosures by workers who are or were employed by public bodies.

The Act can be seen at on the Houses of the Oireachtas website at -
<http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/acts/2014/a1414.pdf>

This policy document relates to the reporting of serious wrongdoing of the nature set out above only and is not intended to act as a substitute for normal day to day operational reporting. Neither is it intended to act as a substitute for existing grievance procedures all of which remain in place and which can be seen on the Department of Public Expenditures website at
<http://hr.per.gov.ie/grievance/>.