

# **Protected Disclosures Act**

## **Policy and Guidance for the making of Protected Disclosures by workers in the National Council for Special Education**

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## 1. Introduction

The purpose of this document is to set out the National Council for Special Education's (NCSE) guidance for the management of Protected Disclosures in the workplace and to outline the channels and procedures provided for reporting concerns. The Protected Disclosures Act 2014 as amended by the [Protected Disclosures \(Amendment\) Act 2022](#) (The Act) enables workers to disclose information in relation to wrongdoing in the workplace by ensuring that safeguards exist should reprisals be taken against them. The Act provides for a "stepped" disclosure regime in which a number of distinct channels (internal, regulatory and external) are available.

The Act requires every public body to establish and maintain procedures for dealing with protected disclosures and to provide written information relating to these procedures to workers. This guidance document is informed by Department of Public Expenditure, NDP Delivery and Reform guidance titled [Interim guidance for public bodies and prescribed persons](#).

This document should be read in conjunction with the [Protected Disclosures Act 2014 and the Protected Disclosures \(Amendment\) Act 2022](#)

Overall responsibility for policies and guidance pertaining to protected disclosures rests with the Principal Officer, Head of People Support, Development & Transformation. Day-to-day responsibility for this guidance document is assigned to Strategic HR, within this function. The Policy will be reviewed annually or when required by Strategic HR.

### Key principles underlying this guidance

The NCSE 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. It recognises the importance of developing an ethical workplace and the valuable contribution of those who raise concerns about wrongdoing. Accordingly, a worker who makes a disclosure will be protected from penalisation (or threatened penalisation), which includes suspension, lay-off or dismissal, demotion and unfair treatment.

A worker who has a reasonable belief<sup>1</sup> that the information contained in their disclosure shows or tends to show that wrongdoing covered by the Act has occurred, is occurring or is likely to occur will be protected against reprisals even if the worker's concern is ultimately misguided or mistaken.

The worker can be assured that the concern will be treated seriously and investigated where it is considered appropriate. Where an investigation takes place, the identity of the worker raising the concern will be safeguarded insofar as it is practicable. The worker raising the concern will be advised on how the issue has been addressed, and 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. The worker will not be asked to waive their right to make a disclosure under any circumstance.

The NCSE will take all reasonable steps to treat disclosures made under this guidance in a confidential and sensitive manner<sup>2</sup>. The NCSE will not disclose the worker's identity without

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<sup>1</sup> For information on reasonable belief see section 6

<sup>2</sup> For information on confidentiality see section 12

their consent, unless it is required by law or necessary for the effective investigation of the relevant wrongdoing.

The NCSE will not tolerate any penalisation<sup>3</sup> of workers who make a report of possible wrongdoing based on a reasonable belief. Any acts of penalisation or attempted penalisation will be treated as a disciplinary matter and disciplinary sanctions will be imposed against a person who carries out any act of penalisation. Workers who experience any act of penalisation should notify the Head of People Support, Development & Transformation in the first instance and the notification will be examined and appropriate action taken where necessary.

## 2. To whom does this Guidance apply?

This guidance is applicable to all workers at or on behalf of the NCSE and provides protections for those beyond the usual definition of employees. For the purposes of the Act a worker means an individual who has acquired information on a relevant wrongdoing in a work-related context. As defined by the Act, a “worker” means an individual working in the private or public sector who acquired information on relevant wrongdoings in a work-related context and includes:

- (a) an individual who is or was an employee,
- (b) an individual who entered into or works or worked under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertook to do or perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party’s business,
- (c) an individual who works or worked for a person in circumstances in which—
  - (i) the individual is introduced or supplied to do the work by a third person, and
  - (ii) the terms on which the individual is engaged to do the work are or were in practice substantially determined not by the individual but by the person for whom the individual works or worked, by the third person or by both of them,
- (d) an individual who is or was provided with work experience pursuant to a training course or programme or with training for employment (or with both) otherwise than under a contract of employment,
- (e) an individual who is or was a shareholder of an undertaking,
- (f) an individual who is or was a member of the administrative, management or supervisory body of an undertaking, including non-executive members,

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<sup>3</sup> For information on penalisation see section 13

(g) an individual who is or was a volunteer,

(h) an individual who is a Council member of the NCSE

(i) an individual who acquires information on a relevant wrongdoing during a recruitment process,

(j) an individual who acquires information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process referred to in paragraph (h)), and

any reference to a worker being employed or to employment shall be construed accordingly.

"work-related context" means current or past work activities in the public or private sector through which, irrespective of the nature of those activities, persons acquire information concerning a relevant wrongdoing and within which those persons could suffer penalisation if they reported such information;

### 3. What is a Protected Disclosure?

A protected disclosure, as defined in the Act, is a **disclosure of information** which, in the **reasonable belief** of a **worker**, tends to show one or more **relevant wrongdoings**; came to the attention of the worker in a **work-related context**; and is disclosed in the manner prescribed in the Act.

### 4. What type of disclosure is not covered by the Guidance?

Protected Disclosures v Personal Complaints

The Act is intended to deal with reports of relevant wrongdoing as defined in the Act. 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 Act.

Interpersonal grievances should generally be dealt with under the internal grievance, or dignity at work, procedures. If a matter is raised as a protected disclosure, but following the initial assessment referred to in Section 11, is determined in fact to be a grievance or dignity at work issue, it should be addressed under these procedures.

For example, a worker may complain that there is a dispute between the worker and a manager concerning their duties or work practices. That type of complaint should generally be dealt with under the grievance (or equivalent) procedure. As another example, a worker may claim that they are being bullied or harassed by a colleague. That type of complaint should generally be dealt with under the dignity at work (or equivalent) procedure. Again, care should be taken to confirm that the complaint concerns an interpersonal grievance exclusively affecting a reporting person.

Accordingly, this guidance document should also be read in conjunction with the following documents (links below) to ensure that the issue being reported on does not fall within an

existing code of practice or that it should be dealt with under another process, such as a grievance procedure or through other recourse mechanisms:

- [Grievance Procedure](#)
- [Civil Service Disciplinary Code](#)
- [Civil Service Code of Standards and Behaviour](#)
- [Civil Servants and Political Activity](#)
- [“Dignity at Work” an anti-bullying, harassment and sexual harassment policy](#)
- [Guidelines on compliance with the provision of the Ethics in Public Office Acts 1995 and 2001](#)
- [Industrial Relations Act 1990 \(Code of Practice on Protected Disclosures Act 2014\) \(Declaration\) Order 2015](#)

In addition, it should be noted that this Guidance

- does not cover disclosures of wrongdoing if the matter is one which it is the function of the worker to detect, investigate or prosecute and does not consist or involve an act or omission on the NCSE
- does not cover a disclosure of information obtained by unlawful or improper means, e.g. unlawful or improper access to computer systems or databases
- is not a replacement for existing mandatory reporting schemes and
- does not cover a disclosure where the worker knowingly conveys false, misleading, frivolous or vexatious information. If it transpires that a worker makes a disclosure, which they know to be false or does not believe to be true, the NCSE will take disciplinary or other appropriate action.

## **5. What type of disclosure is covered by the Guidance?**

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. A disclosure of relevant information made by a worker in the reasonable belief that one or more of the following types of wrongdoing has occurred, is occurring or is likely to occur is covered by the guidance, [See Section 5 - Protected Disclosures Act](#):

For the purposes of the Act, the following are relevant wrongdoings:

- a) that an offence has been, is being, or is likely to be, committed,
- b) 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,
- c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- d) that the health or safety of any individual has been, is being, or is likely to be, endangered,
- e) that the environment has been, is being, or is likely to be, damaged,
- f) 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,
- g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement,
- h) that a breach of specified EU law set out in the Directive has occurred, is occurring or is likely to occur, or

- i) 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 or an attempt has been, is being or is likely to be made to conceal or destroy such information.

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.

The motivation of the worker for making a disclosure is irrelevant when determining whether or not it is a disclosure protected by the Act. All disclosures will be dealt with regardless of the worker's motivation for making the disclosure, and the worker will be protected so long as the worker reasonably believes that the information disclosed tended to show a wrongdoing.

## 6. Requirements for the making of a protected disclosure

A worker should make a disclosure at the earliest possible time if in their reasonable belief, any of the wrongdoings outlined in section 5 above has occurred, is occurring or is likely to occur or there has been a breach of Civil Service policy such that harm may be arising to the public or to the NCSE. Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. 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.

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. Reporting persons are entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds. The High Court has determined that "*Some form of objective basis for such a belief must exist in order for it to constitute a "reasonable belief", as required by the 2014 Act<sup>4</sup>.*"

## 7. What to include in a report?

A disclosure under this guidance should preferably be made in writing to ensure that all the relevant information is made available at the time the disclosure is made.

It is recommended that, at a minimum, reports should include the following details:-

- a) that the report is a protected disclosure and is being made under the Procedures;
- b) the reporting person's name, position in the organisation, place of work and confidential contact details;
- c) the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- d) whether or not the alleged wrongdoing is still ongoing;
- e) whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
- f) information in respect of the alleged wrongdoing (what is occurring / has occurred and how) and any supporting information;

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<sup>4</sup> Barrett v Commissioner for An Garda Síochána & Minister for Justice & Equality [2022] IEHC 86.

- g) the name of any person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to report the wrongdoing disclosed); and
- h) any other relevant information.

A Protected Disclosure Notification Form is available at Appendix A.

### **8. Who can a worker speak to?**

A worker is protected from penalisation if they make a disclosure in the context 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).

If a barrister or solicitor subsequently discloses information which was the subject matter of a disclosure to them, they will not be protected by the Act. A trade union official or an official of an excepted body will however be able to avail of the protections of the Act.

Before making a disclosure a worker may wish to obtain advice or guidance.

### **You can report wrongdoing to the Protected Disclosures Manager.**

The NCSE encourages all workers to make disclosures internally to the Protected Disclosures Manager. The NCSE has appointed the Assistant Principal, Strategic HR as Protected Disclosures Manager, to receive protected disclosures. The Protected Disclosure Manager can be contacted as follows:

(i) by email to [protecteddisclosure@ncse.ie](mailto:protecteddisclosure@ncse.ie)

(ii) in person by appointment with the Protected Disclosures Manager arranged by email to [protecteddisclosure@ncse.ie](mailto:protecteddisclosure@ncse.ie)

(iii) in writing in a sealed envelope marked "Confidential: For the Protected Disclosures Manager", NCSE, 1-2 Mill Street, Trim, Co. Meath.

Any disclosures being made to the Protected Disclosures Manager should, where possible, be made on the Protected Disclosures Reporting Form (see Appendix A of the Policy) and should provide as much information as possible in relation to the alleged relevant wrongdoing. It is recognised that on occasion it may be necessary for a protected disclosure to be made otherwise than via the form i.e. verbally. Workers who make a disclosure otherwise than by using the form are encouraged to indicate that the disclosure is being made as a protected disclosure under the Act in order to ensure the efficient assessment and/or investigation of the disclosure under the Procedures.

To note, the person receiving a disclosure is entitled the "recipient". Further information on receiving a disclosure is set out at Appendix D.

In addition, a discloser may make a disclosure to the Head of Internal Audit if they are unable/unwilling to disclose through their line management. In this instance, the Head of Internal Audit will provide information on the disclosure to the Review Group who will assign an official/other to act as the recipient.

In all cases, unless there is a conflict of interest, the Head of Internal Audit will be notified of the contents of the disclosure, and the outcome of initial assessment /investigation. In addition, the CEO will be notified of the commencement of an initial assessment/ investigation and of the outcome.

When dealing with disclosures, Strategic HR Section assign a reference number to each case in order to record and track disclosures in respect of dates and outcome only. No records or details will be provided to Strategic HR. While it is anticipated that disclosures by employees of the NCSE will be made within the NCSE, the Act recognises that in certain circumstances this may be inappropriate or impossible. The legislation provides for six avenues of disclosure. See Appendix C for further information on channels for disclosure:

- to an employer or other responsible person;
- to a prescribed person; as set out in Statutory Instrument [SI 367/2020](#).
- to a Minister;
- to the Protected Disclosures Commissioner;
- to a legal adviser; or
- to a third party in other cases

### **9.1 DISCLOSURE TO AN EMPLOYER OR OTHER RESPONSIBLE PERSON UNDER SECTION 6 OF THE ACT**

Disclosures to an employer or other responsible person is encompassed by the individual Protected Disclosure policies in each body within the sector which are in line with [Section 21](#) of the Protected Disclosures Act and the [Department of Public Expenditure and Reform guidance](#). In most cases, it should be possible for workers to make protected disclosures internally to their employer. While public bodies cannot oblige workers to make a protected disclosure internally before making it to a Minister or otherwise externally, the internal procedures of a public body should encourage workers to do so, and should confirm that internal disclosures should be taken seriously and that the worker making the disclosure will receive appropriate protection.

### **9.3 DISCLOSURE TO A MINISTER UNDER SECTION 8 AND SECTION 10 OF THE ACT.**

A Protected Disclosure can be made under Section 8 and Section 10, if

- The worker is or was employed in the public body, **and**
- The disclosure is made to a Government Minister or Minister of State who has functions under legislation in respect of that body.

**Both** of the criteria above must be satisfied in addition to the other tests under the Act.

### **9.4 DISCLOSURE TO A MINISTER UNDER SECTION 8 OF THE ACT**

If a worker is or was employed in a public body, the worker may make a protected disclosure to a relevant Minister. The relevant Minister for the public body should be identified in the Procedures.

A “**relevant Minister**” is defined as a Minister with responsibility for the public body concerned in whom functions, whether statutory or otherwise, as respects the public body, are vested, or a Minister of State to whom any such function is delegated. In general, this will be the Minister for the parent department of the public body.

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

- I. 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;
- II. The worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing reported;
- III. 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.

To ensure that the relevant 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 named Minister under section 8 of the Protected Disclosures Act 2014. Disclosures received by Ministers are required to be forwarded to the Protected Disclosures Commissioner within 10 calendar days of receipt. The primary duty of the Commissioner is to refer any reports received to the most appropriate person, whether this may be a Prescribed Person or other suitable individual. Any further queries or correspondence following transmission of the report should be referred to the Commissioner.

The relevant Minister with remit over the NCSE is the Minister of State for Special Education and Inclusion. Reports can be made in confidence<sup>5</sup> to [protected\\_disclosures@education.gov.ie](mailto:protected_disclosures@education.gov.ie) using the Protected Disclosures Notification Form at Appendix A.

## **9.5 DISCLOSURE TO THE PROTECTED DISCLOSURES COMMISSIONER UNDER SECTION 7 AND SECTION 10 OF THE ACT**

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.

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, as per section 9.4 above.

An impartial designated person or persons must also be appointed by the Commissioner. This designated person must be 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.

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<sup>5</sup> For further information on confidentiality see section 12

### **Receipt of a report**

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.

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.

The reporting person must be notified, as soon as practicable, of the transmission of the report and the reasons for doing so, as well of any extension to the 14 day period referred to above.

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.

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.

### **9.6 DISCLOSURE IN OTHER CASES UNDER SECTION 10 OF THE ACT**

Disclosures to a third party e.g. journalist, public representative (including Ministers and TDs) under [Section 10 - Disclosure in other cases](#) of the Protected Disclosures Act may be a protected disclosure if it meets a number of conditions:

- a) The discloser reasonably believes that the information disclosed tends to show relevant wrongdoing, and any allegations contained therein, are **substantially** true and either:
  - (i) the worker has reported internally and/or externally and/or to a Minister but reasonably believes no action or insufficient action has been taken; or
  - (ii) the worker reasonably believes
    - the relevant wrongdoing may constitute an imminent or manifest danger to the public; or
    - reporting internally or externally or to a Minister will lead to penalisation or there is a low prospect of the wrongdoing being addressed

In all these circumstances, it is reasonable for the discloser to make the disclosure to a third party. The assessment of what is reasonable takes account of, among other things, the identity of the person to whom the disclosure is made, the seriousness of the wrongdoing, and whether any action had been taken in cases where a previous disclosure was made.

[For further information on the above reporting channels see Section 6 – 10 of the Protected Disclosures Act 2014](#)

## 10. 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).

A worker may make an anonymous disclosure if they wish to do so. A disclosure is considered anonymous if:

- the identity of the discloser is not revealed and if no contact details for the discloser are provided or
- the discloser does not disclose their name but does provide contact details.

Anonymous disclosures will be acted upon to the extent that this is possible given the constraints in obtaining further information on the alleged wrongdoing.

While affording full and proper consideration to an anonymous disclosure, it should be noted that the protections available under the Act and important elements of this protected disclosure guidance document (e.g. keeping the discloser informed), cannot in such circumstances be accessed by a worker who makes an anonymous disclosure unless the worker is prepared to dispense with anonymity. In addition, it should be noted that a worker cannot obtain redress under the Act without identifying themselves.

## 11. Feedback

Reports of alleged wrongdoing received from a worker in the NCSE will be acknowledged within 7 days. When a disclosure of alleged wrongdoing is made, an initial screening process involving an assessment is undertaken by the recipient. The screening process will involve an assessment of the disclosure to seek to determine whether or not it should be treated as a potential protected disclosure. The assessment will be carried out by an external independent party.

The assessment will consider whether the alleged wrongdoing is serious or minor, whether it is something that can be investigated or not, and, if it can be investigated, what steps should be taken as part of such an investigation. See Appendix E for information on investigation. The worker will be provided with feedback within 3 months by the recipient in relation to the matters disclosed and be advised when consideration of the disclosure is complete, except in exceptional cases.

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.

Obligations on recipient of a disclosure:

- Acknowledge receipt of disclosure within 7 days.
- Diligently follow-up on information reported.
- Provide feedback within 3 months.
- Provide ongoing feedback at 3 month intervals (on request).

## 12. Confidentiality/protection of identity

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

- (a) The disclosure is a necessary and proportionate obligation imposed by Union law or the law of the State in the context 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;
- (b) The recipient:
  - (i) shows that they took all reasonable steps to avoid disclosing the identity of the reporting person;
  - (ii) reasonably believes that disclosing the identity of the reporting person or any such information is necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment;
  - (iii) for the prevention of crime or prosecution of a criminal offence; or
- (c) that the disclosure is required by law.

Where a decision is taken that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser will be notified, in writing, before their identity or the information concerned is disclosed unless such notification would jeopardise:

- (a) the effective investigation of the relevant wrongdoing concerned;
- (b) the prevention of serious risk to the security of State, public health, public safety or the environment; or
- (c) the prevention of crime or the prosecution of a criminal offence.

The discloser may seek a review of this decision by the Review Group.

## 13. What protections are offered to those who make disclosures?

The Act sets out protections and prohibits penalisation of workers who make a disclosure. A worker could be awarded compensation of up to five years remuneration if unfairly dismissed. See [Part 3 Protected Disclosures Act](#). However, a worker who knowingly makes a false or misleading disclosure will not receive protections under the Act.

Penalisation means any act or omission that affects a worker to the worker's detriment, and in particular includes—

- a) suspension, lay-off or dismissal,
- b) demotion, loss of opportunity for promotion, or withholding of 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) coercion, intimidation, harassment or ostracism,
- f) discrimination, disadvantage or unfair treatment,
- g) injury, damage or loss,

- h) threat of reprisal,;
- i) withholding of training;
- j) a negative performance assessment or employment reference;
- k) 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;
- l) failure to renew or early termination of a temporary employment contract;
- m) harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income;
- n) 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;
- o) early termination or cancellation of a contract for goods or services;
- p) cancellation of a licence or permit; and
- q) psychiatric or medical referrals

It should be noted that this list is not exhaustive. Any form of penalisation is prohibited and the fact that a type of behaviour or penalisation is not specifically referenced in the Act does not mean that it cannot be penalisation under the Act.

The NCSE will protect workers who raise concerns against penalisation by investigating all claims of such penalisation and taking appropriate action against those who perpetrate them. The NCSE will investigate and take appropriate disciplinary action against any worker:

- who penalises or seeks to penalise a worker who has made what is being treated as a protected a disclosure, whether it is deemed a protected disclosure or not
- who is found to be unnecessarily or inappropriately endeavouring to identify a worker who makes a disclosure under the legislation
- who, except in circumstances permitted by [section 16\(2\)](#) of the Protected Disclosures Act , discloses details that could establish the identity of a worker who has made what is being treated as a protected disclosure.

Workers can be assured that all reasonable steps will be taken to protect them from penalisation for having made a disclosure and any worker having made a report of wrongdoing that experiences any act of penalisation should inform the Head of People Support, Development & Transformation. Incidents of reprisal against a worker making a report under this guidance may be subject to action under [the Civil Service Disciplinary Code](#)

A worker who is considering making a disclosure should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing.

#### **14. Protection of the person against whom an allegation of wrongdoing has been made (i.e. the Respondent)**

Where an allegation is made against an individual (the "Respondent"), the principles of natural justice and fair procedures will be invoked. This may include a right to challenge the evidence against them. While an investigation is on-going, all reasonable steps should be taken to protect the confidentiality of those who are the subject of allegations in a disclosure pending the outcome of the investigation. Where it is necessary to interview the respondent during the course of the investigation, they should be advised that they are entitled to be accompanied by a colleague or staff representative etc., should they so wish.

The Respondent should be included in the investigation process and made aware of the details of any allegation against them 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).

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.

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).

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.

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.

## 15. Review

The Procedures allow for a system of review of a decision or process if requested by a party affected by any of the following processes:

- 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).

In the event that a party is dissatisfied with the decision following the investigation, it is open to them to request the recipient to have the investigation process examined by the Review Group within 10 working days of having received that decision. Please note that this will **not** be a re-investigation of the disclosure but an examination of the investigation process. The outcome of this investigation will represent a final internal examination of the matter. See Appendix B for further information on making a disclosure and requesting a review by the review group.

## 16. Role of the Review Group

The NCSE's guidance includes the establishment of a Review Group. The Review Group will comprise of Head of Governance and another senior manager in the NCSE and a senior legal representative as required. Their role is to:

- (a) Review, on request of the discloser, an initial assessment on the decision not to proceed with a disclosure to investigation.
- (b) Assign an official or an alternative official to investigate the disclosure, as appropriate.
- (c) Review, on request, the investigation process in the event that the discloser is not satisfied with the decision of the investigation.
- (d) Monitor progress on the implementation of recommendations of a report's findings (if any).
- (e) Review a proposal to disclose the identity of a discloser without their permission in advance of the identity being disclosed (except in exceptional cases).
- (f) Review a proposal to have a disclosure investigated externally using the OGP Protected Disclosures framework.
- (g) Review the outcome of any assessment/ investigation in respect of any complaint of penalisation.
- (h) Notify the Head of Internal Audit of the outcomes of reviews carried out by the Review Group.
- (i) Communicate any decisions taken in writing to discloser/recipient and a copy of all decisions will be retained by the Secretary to the Group.

A decision of the Review Group not to pursue the matter will represent a final internal outcome on the matter.

#### **17. Role of the Head of Internal Audit**

The role of the Head of Internal Audit, where a protected disclosure has been made by an employee of the NCSE, is to:

- (a) maintain records of all disclosures.
- (b) Advise the recipient generally within 10 working days (and no later than 16 working days) of the outcome of the review which will be either (i) or (ii) below;
  - (i) Agreeing with the decision of the recipient not to proceed to investigation; or
  - (ii) Disagreeing with the decision of the recipient and, either referring the disclosure back to the recipient to carry out an investigation or, if appropriate, nominate a new investigating officer.
- (c) notify the CEO on receipt of disclosures which are the subject of an investigation and on the outcome including report recommendations (if any).
- (d) report to the CEO and the Audit and Risk Committee, details of all disclosures brought to their attention and their findings.
- (e) monitor the implementation of the recommendations that have been formulated as a consequence of a report.
- (f) liaise with the Review Group to arrange for the nomination of a recipient as required.
- (g) provide a summary report on all protected disclosures which will be included in the Department's Annual Report as required under Section 22 of the Protected Disclosures Act 2014.
- (h) monitor the operation and management of Protected Disclosures and report to the Audit and Risk Committee.

### **18. Role of Protected Disclosure Manager**

Where a protected disclosure has been made by a worker in the NCSE, the role of the Protected Disclosure Manager, Strategic HR is to:

- (a) Record and track disclosures.
- (b) Lead and support the work of the Review Group as outlined above.
- (c) Conduct periodic reviews and evaluate DP procedures where appropriate, and report to senior management and the Audit and Risk Committee.

### **19. Role of the Head of Human Resources**

Where a protected disclosure has been made by a worker in the NCSE, the role of the Head of People Support, Development & Transformation is to:

- (a) Investigate any instances of penalisation reported by a worker.
- (b) Decide on the disciplinary action required where it is established that a worker knowingly made a false, misleading, frivolous or vexatious disclosure.
- (c) Provide information on investigation procedures.

### **20. Role of the Audit and Risk Committee**

The Audit and Risk Committee will advise the Council on anti-fraud policies, protected disclosure processes, and arrangements for special investigations.

### **21. Role of NCSE Council**

The role of NCSE Council is to approve and oversee NCSE Protected Disclosure policy and to be kept informed by the Audit and Risk Committee and Internal Audit on the operation of the Protected Disclosure policy and protected disclosures on hand.

### **22. Records**

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

Records of protected disclosures raised, including the outcome, should be maintained for a minimum of seven years after the closure of the case by the Head of Internal Audit. These records should be maintained in a confidential and secure form that does not endanger the confidentiality of the person making the disclosure or damage reputations.

An Annual Report on Protected Disclosures, in accordance with Section 22 of the Protected Disclosures Act 2014, is published not later than 31 March in each year in relation to the preceding year. The information set out in the annual report will be provided in such a way that it does not enable the identification of reporting persons or persons concerned. Annual Reports are published online at:

[gov.ie](http://www.gov.ie) - Protected Disclosures Annual Reports ([www.gov.ie](http://www.gov.ie))

**Appendix A: Protected Disclosures Notification Form**

Before you complete this form, you should read the attached Guidance on protected disclosure reporting in the workplace carefully and ensure that the subject matter of your concern is covered by the legislation.

Please note that a protected disclosure, in the Act, is a **disclosure of information** which, in your **reasonable belief** tends to show one or more **relevant wrongdoings**; came to your attention in a **work-related context**; and is disclosed in the manner prescribed in the Act. If you make a protected disclosure which you know or reasonably ought to know to be false you will be guilty of an offence under the legislation.

1. I..... (name of worker making the protected disclosure) wish to make a disclosure under the Protection Disclosures Act 2014 as amended by The Protected Disclosures (Amendment) Act 2022
  
2. Grade  
.....  
Place of work.....
  
3. Category of Wrongdoing
  - 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,
  - that a breach of specified EU law set out in the Directive has occurred, is occurring or is likely to occur, 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 or an attempt has been, is being or is likely to be made to conceal or destroy such information.
  
4. Date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced  
.....
  
5. Is the alleged wrongdoing still ongoing?  
.....
  
6. Has this alleged wrongdoing already been disclosed, if so, to whom, when and what action was taken?  
.....  
.....

.....  
.....  
.....

7. Details of the protected disclosure (*care should be taken to only include the name(s) of individual(s) directly relevant to the report*)

.....  
.....  
.....  
.....  
.....

Please provide contact details<sup>6</sup> at which the recipient can contact you:

Address.....  
.....  
.....

Tel no. ....

Email .....

Worker's signature.....

Date.....

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<sup>6</sup> Anonymous disclosures will be acted upon to the extent that this is possible given the constraints in obtaining further information on the alleged wrongdoing.

## Appendix B: Overview of Protected Disclosure process

### How to make a disclosure

#### What should a disclosure include?

A disclosure under this guidance should preferably be made in writing to ensure that all the relevant information is made available at the time the disclosure is made. A Protected Disclosures Notification Form is attached at Appendix A.

It is recommended that, at a minimum, reports should include the following details:-

- a) that the report is a protected disclosure and is being made under the Procedures;
- b) the reporting person's name, position in the organisation, place of work and confidential contact details;
- c) the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- d) whether or not the alleged wrongdoing is still ongoing;
- e) whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
- f) information in respect of the alleged wrongdoing (what is occurring / has occurred and how) and any supporting information;
- g) the name of any person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to report the wrongdoing disclosed); and
- h) any other relevant information.

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

The worker is advised to state that the disclosure is made under the Protected Disclosures Act and state if they do / do not expect confidentiality. **[Note:** The Act and the Guidance recognise that it may not always be possible to completely protect the identity of the discloser. The recipient does however have a responsibility to safeguard the worker' identity insofar as is practically and pragmatically possible. [See section 12. Confidentiality/protection of identity]

There is no required format for the making of a disclosure. A disclosure can be made:

- (i) anonymously **[Note:** Anonymous disclosures will be acted upon to the extent that this is possible given the constraints in obtaining further information on the alleged wrongdoing.]
- (ii) electronically, verbally or in writing **[Note:** When a disclosure is made verbally, it will be documented by the recipient and agreed with the discloser.]

#### What happens after you make a disclosure?

When a disclosure of alleged wrongdoing is made, an initial screening process involving an assessment is undertaken by the recipient. The screening process will involve an assessment of the disclosure to seek to determine whether or not it should be treated as a potentially protected disclosure. The assessment will consider whether the alleged

wrongdoing is serious or minor, whether it is something that can be investigated or not, and if it can be investigated, what steps should be taken as part of such an investigation. The person will be provided with feedback by the recipient in relation to the matters disclosed and be advised when consideration of the disclosure is complete, except in exceptional cases.

Feedback requirement under the Act:

- Acknowledged within 7 days, unless requested not to or to do so would jeopardise protection of reporting person's identity.
- Diligently follow-up on information reported.
- Provide feedback within 3 months (or 6 months in exceptional cases where reported to a prescribed person).
- Provide ongoing feedback at 3 month intervals (on request)
- Provide information on final outcome of any investigation triggered by report.

If you are not satisfied with the outcome at the initial screening or investigation stage you will have the option of requesting a review by the Review Group see below.

Information and feedback will be provided in confidence, however, the recipient is not obliged to inform you of the progress, or outcome, of any disciplinary process involving another worker. In general, such information is confidential between the employer and the worker disciplined.

You may seek legal advice before and after making a disclosure. You can seek independent advice at any time on dealing with penalisation or a failure to adequately respond to the making of a disclosure.

#### **Decision not to proceed to investigation:**

It should be noted that there is no specific provision for investigations and/or actions to be undertaken under the Protected Disclosures legislation. Where investigations and/or actions are warranted they will be conducted under the appropriate existing policy or procedure, where such exists.

You will be advised by the recipient of the basis for this decision. If you are dissatisfied with a decision of the recipient not to pursue the matter further you may request a review of the initial screening decision by the Review Group (via the recipient) within 10 working days<sup>7</sup> of having received the decision.

#### **Review Group:**

A review of the initial screening decision will be undertaken by the Review Group who will notify the Head of Internal Audit of the review request and the outcome of that review. Strategic Hr will provide secretarial assistance as required to the Review Group.

The person will be advised generally within 10 working days (and no later than 16 working days) by the recipient of the outcome of the review which will be either (a) or (b) below.

- (a) Agreeing with the decision of the recipient not to proceed to investigation

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<sup>7</sup> Timeframes are not mandatory and are dependent on the contents of the disclosure

- (b) Disagreeing with the decision of the recipient and, either referring the disclosure back to the recipient to carry out an investigation or, if appropriate, nominate a new investigating officer.

### **Decision to proceed to investigation:**

The discloser will be advised by the recipient of the basis for their decision in respect of the screening and you will be advised of their role in the investigation. The discloser will be updated on the progress and outcome of the investigation as appropriate having regard to the nature of the matters investigated. 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 however, the recipient will advise the discloser of progress and the investigation will be brought to a conclusion as speedily as possible.

In the event that the discloser is are dissatisfied with the decision following the investigation, it is open to them to request the recipient to have the investigation process examined by the Review Group within 10 working days of having received that decision. Please note that this will **not** be a re-investigation of the disclosure but an examination of the investigation process. The outcome of this investigation will represent a final internal examination of the matter.

As it is not possible to know at the time whether a disclosure will subsequently be deemed protected under the Protected Disclosures Act the recipient should keep a written record of their actions, including timelines.

It is important to note that some matters may be of such seriousness that the investigation will have to be carried out professionally, such as by subject matter experts or may need to be reported to and investigated by An Garda Síochána, if this is the case the discloser will be informed accordingly.

**Note:** Strategic HR assign a reference number and record and track disclosures in respect of dates and outcome only. No records or details will be provided to Strategic HR.

**Appendix C: Channels for making a Protected Disclosure both inside and outside of the Department**

Disclosure to	Employer	Prescribed person	Commissioner	Minister
	(Internal report)	(External report)	(External report)	(Other)
<b>Specific section(s) of the Act</b>	5, 6, 6A	5, 7, 7A	5, 7, 10B, 10C	5, 8, 10D
<b>Who does this apply to?</b>	<p>A worker of the employer.</p> <p>A worker of another employer where the wrongdoing relates solely/mainly to the conduct of that employer or for which the employer has legal responsibility.</p>	A worker.	A worker.	A worker who is or was employed by a public body.
<b>Conditions for protection under the Act</b>	<p>Came to attention in work-related context. Reasonable belief that information tends to show relevant wrongdoing.</p>	<p>Came to attention in work-related context. Reasonable belief that:</p> <ul style="list-style-type: none"> <li>· Information tends to show relevant wrongdoing;</li> <li>· Information and any allegations are substantially true;</li> <li>and</li> <li>· Relevant wrongdoing relates to matter for which person is prescribed.</li> </ul>	<p>Came to attention in work-related context. Reasonable belief that:</p> <ul style="list-style-type: none"> <li>· Information tends to show relevant wrongdoing; and</li> <li>· Information and any allegations are substantially true.</li> </ul>	<p>Came to attention in work-related context. Reasonable belief that information tends to show relevant wrongdoing. Meets one of the following conditions:</p> <ul style="list-style-type: none"> <li>· Has reported internally and/or externally but reasonably believes no action or insufficient follow-up action taken;</li> <li>· Reasonably believes the Head of the public body concerned is complicit in the wrongdoing;</li> <li>· Reasonably believes wrongdoing may constitute imminent or</li> </ul>

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				manifest danger to public interest.
<b>Anonymous reports</b>	Public bodies are required to accept.	Must accept unless prohibited by other legislation.	Must accept.	Must accept.
<b>Method of reporting</b>	In writing or orally or both (at choice of employer).	In writing and orally.	In writing and orally.	At choice of Minister.

<p><b>Obligations on recipient</b></p>	<p>Acknowledge within 7 days. Diligently follow-up on information reported. Provide feedback within 3 months. Provide ongoing feedback at 3 month intervals (on request).</p>	<p>Acknowledge within 7 days, unless requested not to or to do so would jeopardise protection of reporting person's identity. Diligently follow-up on information reported. Provide feedback within 3 months (or 6 months in exceptional cases) Provide ongoing feedback at 3 month intervals (on request) Provide information on final outcome of any investigation triggered by report.</p>	<p>Acknowledge within 7 days, unless requested not to or to do so would jeopardise protection of reporting person's identity. Transmit the report within 14 days (or longer in exceptional circumstances) to:</p> <ul style="list-style-type: none"> <li>· Such prescribed person(s) as the Commissioner considers appropriate; or</li> <li>· Another suitable person (other than a prescribed person) as the Commissioner considers appropriate.</li> </ul> <p>If no prescribed person or suitable person can be identified, the Commissioner shall follow-up directly on the report in the same manner as a prescribed person.</p>	<p>Transmit the report to the Commissioner within 10 days of receipt. On receipt the Commissioner shall:</p> <ul style="list-style-type: none"> <li>· Acknowledge within 7 days, unless requested not to or to do so would jeopardise protection of reporting person's identity.</li> <li>· Transmit the report within 14 days (or longer in exceptional circumstances) to: <ul style="list-style-type: none"> <li>o Such prescribed person(s) as the Commissioner considers appropriate; or</li> <li>o Another suitable person (other than a prescribed person) as the Commissioner considers appropriate.</li> </ul> </li> <li>· If no prescribed person or suitable person can be identified, the Commissioner shall follow-up directly on the report in the same manner as a prescribed person.</li> </ul>
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**Appendix D: Guidance for Receiving a Disclosure**

This Appendix provides guidance for senior officers in the NCSE who are approached with disclosures alleging serious wrongdoing. The main purpose of the Protected Disclosures Act 2014 as amended by the Protected Disclosures (Amendment) Act 2022 ('the Act') is to encourage workers to report relevant wrongdoing and to protect them from penalisation by their employer for having made a disclosure in accordance with its provisions. The NCSE's "Policy and Guidance for the making of Protected Disclosures by workers in the NCSE" ('the Guidance') reflects the provisions and intent of the legislation.

### **Your task as the initial recipient – preliminary screening**

In the first instance, Strategic HR must be informed of the receipt of a potential protected disclosure. The Head of Internal Audit should be advised, in writing, of the receipt of the disclosure, the nature of the information contained in the disclosure and the final decision of the screening process transmitted to the discloser.

An initial screening process involving an assessment of the disclosure should be undertaken by the recipient to determine whether or not it should be treated as a protected disclosure. If it is unclear whether information qualifies as a potentially protected disclosure, the information should be treated as a protected disclosure (and protect the identity of the discloser, subject to Section 12 until satisfied that the information is not a protected disclosure). Consider passing to a colleague for assessment in the event of a conflict of interest.

It may be necessary, as part of the screening process, to differentiate between protected disclosures and personal complaints. For example, where the information provided may involve a personal complaint and a protected disclosure. In these circumstances, it may be necessary to disentangle the different elements of the complaint/disclosure and determine whether any specific disclosure of information relating to a relevant wrongdoing has taken place.

If following the assessment it is found that no further investigation is required, the discloser should be advised by the recipient of the basis for this assessment, insofar as possible and advised of their right to ask for a review by the Review Group outlining the reasons as to why they feel that the matter requires investigation. If found that an investigation is required, in most but not all cases, the official who carried out the preliminary screening will be the official who carries out the investigation.

In exceptional circumstances, it may be necessary to request an alternative senior manager or external third party to investigate the disclosure, subject to the agreement of the Review Group.

### **Pre-existing disciplinary action**

Where a worker, who is the subject to some pre-existing or expected disciplinary issue, makes a report of wrongdoing the disclosure will be given full and proper consideration consistent with that set out in this guidance document and the legislation.

Consideration will be proportionate in light of the circumstances in which it is raised. As far as is possible in all the circumstances of the case, the information disclosed will be separated from the worker making the disclosure to seek to remove the risk that the report will not be properly assessed by the NCSE, on account of a belief that it is being made to safeguard the worker from redundancy or disciplinary action.

The worker will not benefit from protection under the protected disclosure procedures solely by virtue of having made a disclosure of relevant wrongdoing and would remain subject to the pre-existing disciplinary issue.

### **The issue of confidentiality**

The Act and the Guidance recognise that it may not always be possible to completely protect the identity of the discloser. You do however have a responsibility to safeguard the identity of the discloser insofar as is practically and pragmatically possible and you should not disclose the name when reporting to Strategic HR, Review Group etc. It is important to ensure that any consultation you engage in as the initial recipient is carried out in a discreet

and careful manner and that you take all reasonable steps to maintain the confidentiality of the identity of the person who approached you.

It is also important to note that, in accordance with the Act, a failure to comply with this requirement is actionable by the worker who made the disclosure if they suffer any loss by reason of the failure to comply.

### **Keeping the discloser informed**

A vital element in the provision of assurance that the disclosure will be taken seriously is open and honest communication.

You should take the time to explain your role in the process as set out in the Guidance and that your initial screening does not involve a full investigation. You should also make it clear that an underlying principle of the Guidance is that the discloser is not disadvantaged in any way for having made a disclosure based on a reasonable belief even if no wrongdoing is identified. This would also be an appropriate time to discuss the limits on confidentiality as set out in the legislation.

While there is a clear necessity to draw attention to the consequences of making a protected disclosure not based on a reasonable belief, an over emphasis on this aspect could potentially discourage persons from making reports of wrongdoing. Such an outcome would be contrary to one of the main purposes of the Guidance which is to encourage staff to speak up about wrongdoing.

Where you have arrived at a conclusion that the discloser was not fully aware of all the facts or was genuinely mistaken in their belief of the occurrence or likely occurrence of wrongdoing, it is especially important to explain the basis of your finding. As a discloser can request a review by the Review Group, it is important that you adequately explain matters to avoid unnecessary reviews.

### **Follow-up under the Act**

The public body must acknowledge, in writing, to the reporting person receipt of every report made through the internal reporting channel within 7 calendar days of its receipt.

The acknowledgement should provide further information about the protected disclosures process and enclose or link to the Procedures that will apply to the handling of the report. The acknowledgment should endeavour to set expectations early as to what will happen – and when – after the report is made. Information should be provided in relation to the protection of the identity of the reporting person and protection from penalisation. Follow-up is defined as meaning any action taken, by the recipient of a report, or a person to whom the report is transmitted, to assess the accuracy of the information and, where relevant, to address the wrongdoing reported. Therefore, follow-up includes the assessment and investigation of the report of a disclosure and actions taken to address the wrongdoing. The overriding requirement when providing feedback is that no information is 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. The extent of the feedback will depend on the report itself. If there is no relevant wrongdoing identified, this can be communicated in the feedback. If an alleged relevant wrongdoing is identified, this can 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.

**Keeping the organisation informed**

The Guidance requires that you formally advise others in the organisation of the fact that a disclosure of wrongdoing has been brought to your attention.

A checklist has been prepared for your guidance, you should maintain a copy of this checklist for your records. As there are no time limits set out in the Act or the Guidance, it is important that you maintain your records until such time as you are satisfied that all matters connected with the disclosure have been disposed of after which all records should be transferred to the Head of Internal Audit.

**Initial recipient of a disclosure – checklist**

Name:

Date:

1.	Have you read and familiarised yourself with the content of the Policy and Guidance for the making of Protected Disclosures by workers in the NCSE?	
2.	Have you taken particular note relating to your responsibilities concerning the avoidance of the disclosure of information that might identify the person by whom the disclosure was made?	
3.	Have you given a copy of this Guidance to the discloser and advised them that their concerns will be treated seriously?	
4.	Has the Discloser adequately demonstrated to you that the matters they are raising fall into one of the categories set out in number 5? What type of disclosure is covered by the Guidance?	
5.	If the answer to question 4 is “NO” have you advised the discloser that the subject matter of the disclosure must refer to one of the matters set out at number 5 “What type of disclosure is covered by the Guidance”?	
6.	If the answer to question number 4 is “YES” have you advised the discloser that you will carry out an initial screening and revert with an indication as to whether, in your view, the matter requires a formal investigation?	
7.	Have you explained the difference between an initial screening and a full investigation?	
8.	Have you explained that in the event of a conclusion that an investigation is required the matter will be investigated and that this may be referred to another officer for investigation if it is considered more appropriate?	
9.	Have you explained to the discloser the limits on confidentiality as set out in the Protected Disclosures legislation?	
10.	Where practicable, if it is a verbal disclosure has the discloser confirmed that the information provided, and noted by you, is correct?	
11.	Have you informed the discloser in advance of a decision if it is necessary to disclose information that may or will disclose their identity you will afford them the option of having that decision reviewed by the Review Group?	

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12.	Have you provided the discloser with periodic feedback in relation to the matters disclosed?	
13.	In the event that you have arrived at the view that an investigation is not appropriate have you advised the discloser, in so far as is possible, the basis for arriving at that conclusion?	
14.	Have you explained to the discloser that if they are not happy with a decision not to pursue the matter further you can refer the matter to a Review Group who will review that decision?	
15.	Have you provided the following information to Strategic HR  1. Date Disclosure Received 2. Recipient Name 3. Category disclosure and requested a Ref No. and having carried out the screening the outcome of that screening?	
16.	Have you formally advised the head of Internal Audit of the receipt of the disclosure, the nature of the information contained therein and the outcome of your screening?	
17.	If the Review Group forms the view that it is more appropriate for another officer to carry out the investigation, have you passed all relevant papers to that new recipient and informed the discloser of the contact details of the new recipient?	

## **Appendix E: Guidance for Investigation of Disclosures**

This Appendix provides guidance for senior officers in the NCSE who are responsible for investigating alleged serious wrongdoing under the Protected Disclosures Act 2014 as amended by The Protected Disclosures (Amendment) Act 2022 ('the Act'). The Act provides protection for workers from penalisation by their employer for having made a disclosure in accordance with its provisions. The NCSE's Information and Guidance on Protected Disclosures in the Workplace ('the Guidance') reflects the provisions and intent of the legislation.

### **Your task as the recipient carrying out the investigation**

The initiation of an investigation must be reported to the Head of Internal Audit, the Review Group and Strategic HR by the recipient within 3 working days. The Head of Internal Audit will inform the CEO of the decision to investigate.

The manner in which you conduct your investigation is one for determination by you having regard to the particular circumstances of the case. This is however subject to two very important considerations:

- *The issue of confidentiality* - please refer to section 12 above.
- *Fair investigatory procedures* – Investigation arising as a consequence of a disclosure must, as with all other internal investigations, be carried out in a manner which is fully consistent with existing investigatory procedures. Remember that in addition to your responsibility to the discloser you also have a responsibility to ensure that accusations of wrongdoing, which could potentially prove to be incorrect, are not made against innocent persons.

Should you require any particular guidance in relation to procedures you should seek advice from the Head of People Support, Development & Transformation.

### **Keeping the discloser informed**

You should take the time to explain your role in the process as set out in the Guidance and the nature of the investigation you will undertake. You should also make it clear that an underlying principle of the Guidance is that the discloser is not disadvantaged in any way for having made a disclosure based on a reasonable belief even if no wrongdoing is identified. This would also be an appropriate time to discuss the limits on confidentiality as set out in the legislation.

While there is a clear necessity to draw attention to the consequences of making a disclosure not based on a reasonable belief, an over emphasis on this aspect could potentially discourage persons from making reports of wrongdoing. Such an outcome would be contrary to one of the main purposes of the Guidance which is to encourage staff to speak up about wrongdoing.

If your investigation is taking some time you should provide the discloser, in so far as is possible and appropriate, with an update of progress.

### **Upon completion of your investigation**

You are required under this guidance to advise the discloser, the Head of Internal Audit Unit and the Review Group of the outcome of your investigation.

In the event that the discloser is not satisfied with a decision of the investigation you should advise the discloser that it is open to them to request you to have the investigation process examined by the Review Group within 10 working days of having received the decision.

Where you have arrived at a conclusion that the discloser was not fully aware of all the facts or was genuinely mistaken in their belief of the occurrence or likely occurrence of wrongdoing it is especially important to explain the basis of your finding to the discloser.

In a case where you have arrived at a conclusion that the discloser did not make their disclosure based on a reasonable belief –i.e. the disclosure was made for frivolous or vexatious reasons, you should advise the Review Group who may consult with the Head of People Support, Development & Transformation to consider whether disciplinary proceedings ought to be pursued against the person concerned.

The making of a disclosure and subsequent investigation is a serious matter. You should carefully record all of the steps you have taken during the course of your discussions with the discloser and during the course of your investigation. A checklist has been prepared for your guidance, you should maintain a copy of this checklist for your records. As there are no time limits set out in the legislation or the Guidance it is important that you maintain your records until such time as all matters connected with the disclosure have been disposed of to your satisfaction after which they should be transferred to the Head of Internal Audit.

### **Outcome of investigation**

Your report of findings should be sent to the Review Group containing the following information:

- a description of the disclosure and the findings of the investigation
- the effect the disclosure had on the NCSE, if any
- the means of perpetrating the malpractice or impropriety and if appropriate
- recommendation of necessary measures to prevent a recurrence;
- an action plan to implement these recommendations
- the action required to strengthen future responses under this guidance or a conclusion as to the way forward and or any other relevant material.

The recipient will forward a copy of the report to the Review Group setting out the appropriate means by which the report's findings/ recommendations are to be implemented. The report including the implementation plan (if any) will be transmitted to the Head of the Internal Audit who will monitor its implementation as appropriate. The Head of Internal Audit will forward a copy of the final report including an implementation plan if any, to the CEO.

**Investigation of a disclosure – checklist**

Name:

Date:

1.	Have you read and familiarised yourself with the content of the Policy and Guidance for the making of Protected Disclosures by workers in the NCSE?	
2.	Have you discussed with the Review Group, if appropriate, whether you should continue with the investigation or the investigation is more appropriate to another Officer?	
3.	Have you taken particular note relating to our responsibilities concerning the avoidance of the disclosure of information that might identify the person by whom the disclosure was made?	
4.	Have you met with the discloser and advised them that their concerns will be treated seriously?	
5.	Have you advised the discloser you are investigating the disclosure, that you will keep them advised of the progress of the investigation as appropriate and that when your investigation is completed you will advise them of the outcome of that investigation?	
6.	Have you explained to the discloser the limits on confidentiality as set out in the Protected Disclosures legislation?	
7.	Have you explained to the discloser that if they are not satisfied with a decision not to pursue the matter further, you can refer the matter to the Review Group on their behalf for an examination of the investigation process and that this examination repre	
8.	Are you familiar with procedures for conducting an investigation taking account of the principles of natural justice?	
9.	Have you advised the discloser of the outcome of your investigation and explained, in so far as is possible, the reasons for your decision?	
10.	If you arrived at the conclusion that in making their disclosure the discloser did not have a reasonable belief in the wrongdoing have you referred the matter to the Review Group?	
11.	Have you forwarded a copy of the report to the Review Group?	
12.	Have you forwarded a copy of the final report to the Head of Internal Audit?	
13.	Have you notified Strategic HR of the date of the decision?	

## Appendix F: Glossary of terms

**“Discloser”** The ‘worker’ making the disclosure.

**“Disclosure”**, in a case in which information disclosed is information of which the person receiving the information is already aware, means bringing to the person’s attention;

**“Mandatory Reporting”** The Protected Disclosures Act 2014 does not make whistleblowing mandatory. The legislation aims to protect those who come forward and voluntarily make a disclosure. However the legislation does not remove existing reporting obligations, so where the law already makes reporting mandatory the obligation to report remains in place.

**“Other Persons”** There is no definitive list of who can be or who cannot be a person for the purpose of a disclosure under section 10 of the Act. Instead the legislation requires that the disclosure to that particular person be ‘reasonable’, bearing in mind all the circumstances and that key criteria are met.

**“Penalisation”** means any act or omission that affects a worker to the worker’s detriment, and in particular includes—

- a) suspension, lay-off or dismissal,
- b) demotion, loss of opportunity for promotion, or withholding of 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) coercion, intimidation, harassment or ostracism,
- f) discrimination, disadvantage or unfair treatment,
- g) injury, damage or loss,
- h) threat of reprisal,;
- i) withholding of training;
- j) a negative performance assessment or employment reference;
- k) 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;
- l) failure to renew or early termination of a temporary employment contract;
- m) harm, including to the worker’s reputation, particularly in social media, or financial loss, including loss of business and loss of income;
- n) 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;

**“Prescribed Persons”** Disclosures relating to relevant wrongdoings can be made to certain ‘Prescribed Persons’ (section 7.2 of the Act), usually the chief executive or relevant regulator such as the National Employment Rights Authority. The most up-to-date list of Prescribed Persons is available in [SI 367/2020](#). A report can also be made to the Protected Disclosures Commissioner.

**“Reasonable belief”**

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. Reporting persons are entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds. The High Court has determined that “*Some form of objective basis for such a belief must exist in order for it to constitute a “reasonable belief”, as required by the 2014 Act.*<sup>8</sup>”.

**“Recipient”** The person to whom the disclosure is made.

**“Relevant Information”** is information which the worker reasonably believes tends to show one or more “relevant wrongdoings” and which came to their attention in a work related context.

**“Relevant wrongdoing”** The following matters are relevant wrongdoings for the purposes of this Act—

- a) that an offence has been, is being or is likely to be committed,
- b) 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,
- c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- d) that the health or safety of any individual has been, is being or is likely to be endangered,
- e) that the environment has been, is being or is likely to be damaged,
- f) 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,
- g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement,
- h) that a breach of specified EU law set out in the Directive has occurred, is occurring or is likely to occur, or
- i) 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 or an attempt has been, is being or is likely to be made to conceal or destroy such information.

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.

Reports may also be made by workers of wrongdoing in respect of other relevant employment-specific or profession-specific obligations, which may not be covered by the definition of wrongdoing in section 5 of the Act and may be covered by other statutory [protection for reports](#). 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.

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<sup>8</sup> Barrett v Commissioner for An Garda Síochána & Minister for Justice & Equality [2022] IEHC 86

**“Worker”**

As defined by the Act, a “worker” means an individual working in the private or public sector who acquired information on relevant wrongdoings in a work-related context and includes

- (a) an individual who is or was an employee,
- (b) an individual who entered into or works or worked under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertook to do or perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party’s business,
- (c) an individual who works or worked for a person in circumstances in which—
  - (i) the individual is introduced or supplied to do the work by a third person, and
  - (ii) the terms on which the individual is engaged to do the work are or were in practice substantially determined not by the individual but by the person for whom the individual works or worked, by the third person or by both of them,
- (d) an individual who is or was provided with work experience pursuant to a training course or programme or with training for employment (or with both) otherwise than under a contract of employment,
- (e) an individual who is or was a shareholder of an undertaking,
- (f) an individual who is or was a member of the administrative, management or supervisory body of an undertaking, including non-executive members,
- (g) an individual who is or was a volunteer,
- (h) an individual who acquires information on a relevant wrongdoing during a recruitment process,
- (i) an individual who acquires information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process referred to in paragraph (h)), and
- (j) an individual who is deemed to be a worker by virtue of subsection (2)(b),

and any reference to a worker being employed or to employment shall be construed accordingly.

"work-related context" means current or past work activities in the public or private sector through which, irrespective of the nature of those activities, persons acquire information concerning a relevant wrongdoing and within which those persons could suffer penalisation if they reported such information;

**Document Version Control**

Document Purpose:	To set out information and guidance on Protected Disclosures for workers in the NCSE
Version Number:	1
Date:	March 2024
Author:	Michael Wall
Authorised By:	Trevor Jordan

**Change History**

Version	Issue Date	Author	Reason for Change