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DEPARTMENT OF JUSTICE AND EQUALITY

Protected Disclosures Policy

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**Department of Justice and Equality
Protected Disclosures in the Workplace**

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Department of Justice and Equality Protected Disclosures in the Workplace

1 Introduction

The purpose of this document is to set out the Department of Justice and Equality's policy on Protected Disclosures in the workplace.

The Protected Disclosures Act 2014 provides a robust statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the workplace, in the knowledge that they can avail of significant employment and other protections if they are penalised by their employer or suffer any detriment for making such disclosures.

This Policy should be considered a part of the Departments approach to good corporate governance ensuring that high standards are maintained and that a culture of 'speaking up' is encouraged.

2 Principles and Objectives

The objective of this policy is to encourage all workers to raise internally genuine concerns about possible wrongdoing in the workplace so that these concerns can be investigated following the principles of natural justice and addressed in a manner appropriate to the circumstances of the case.

This policy is designed to ensure that all disclosures of wrongdoing in the workplace will, as a matter of routine, be the subject of an appropriate internal investigation followed by appropriate actions based on the investigation findings thereby ensuring workers will not have a need to, or a basis for, seeking to access the remedies of the Protected Disclosures Act 2014.

The Department will ensure that there is a mechanism to enable all workers to voice concerns in good faith internally in the confidence that in so far as possible:

- their communication will be treated with confidentiality by the recipient
- their concern will be investigated where that is considered appropriate
- the person reporting will receive protection from victimisation or harassment
- the person reporting will not be subject to retribution or disciplinary proceedings

The policy relates to the reporting of relevant wrongdoing as defined in the Protected Disclosures Act 2014 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 or other HR procedures.

3 To whom does this policy apply?

This policy applies to, but is not limited to, all staff who are employees of the Department of Justice and Equality. Employees of organisations or agencies with their own Accounting Officer (for example An Garda Síochána) are required to report under their own organisations policy.

Statutory bodies and executive offices of the Department will be invited to adopt this policy if deemed appropriate by the Department and the body concerned. In the absence of any policy, this policy will be deemed to apply to the staff of such bodies. A list of bodies who have adopted the policy, or a variant of the policy, will be maintained in an Appendix to this document.

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This policy refers to “workers” throughout the document, This term covers all persons who are employees whether permanent or temporary, long term contractors, agency workers or any other persons in receipt of payment for service to the Department. Retired employees or ex-workers may also report under this policy.

4 What is a Protected Disclosure

A Protected Disclosure is as defined in the Protected Disclosures Act 2014, being a disclosure of relevant information related to wrongdoing made by a worker in the manner specified under the act.¹

- A worker must reasonably believe that the information disclosed tends to show one or more “relevant wrongdoings”
- The wrongdoing must come to the workers attention **in connection with his or her employment**. For example, a disclosure will not be protected if it relates to matters in someone’s personal life outside and unconnected to the workplace.

As it is not possible to know at the time of disclosure whether the disclosure would subsequently be deemed protected under the 2014 Protected Disclosure Act, all disclosures will initially be treated as if they meet the criteria in the Act.

5 What type of disclosure is covered by this policy

A Protected Disclosure involves the reporting of information which, in the reasonable belief of the worker making the report, is true and tends to show that one or more of the following relevant wrongdoings has been committed or is likely to be committed:

- Unlawful or improper use of public funds or resources;
- Financial misconduct or fraud;
- Corruption, bribery or blackmail;
- Failure to comply with a legal or regulatory obligation;
- Endangerment of the health and safety of employees and clients;
- The commission of a criminal offences;
- Miscarriage of justice;
- Gross negligence or gross mismanagement by public bodies
- The concealment of any of the above.

The list above is for illustrative purposes and is non exhaustive.² All employees are encouraged to raise genuine concerns about possible improprieties at the earliest opportunity, and in an appropriate way. This policy outlines the channels and procedures provided for reporting concerns. A concern which is not reported may allow the malpractice to continue, to the detriment of the Department.

¹ See Section 18

² Full list available in Protected Disclosures Act 2014 at <http://www.irishstatutebook.ie/2014/en/act/pub/0014/index.html>

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6 What type of disclosure is not covered by this policy

This policy does not cover matters of private interest, i.e. personal complaints or personal grievances. Matters of a personal nature should continue to be reported to the Human Resource Division under relevant Human Resource policies such as the Grievance Procedure or the Civil Service anti-bullying and harassment policy – Dignity at Work.

7 Making a Disclosure

As a first step, a worker, believing reasonably, that a wrongdoing exists in the workplace, should **consider** reporting the matter to his/her:

a. Line manager at HEO level or above / Head of Function

If the worker would be uncomfortable or otherwise reluctant to report to his/her manager, then they can report the matter to

b. The next highest level of management up to and including Director/Assistant Secretary

However, if for any reason the worker feels it inappropriate to report a wrongdoing **to the persons above, then s/he should report these concerns to**

c. The Head of Internal Audit.

Where a worker has reported to line management and is dissatisfied with the response/outcome of line managements' investigation then s/he retains the right to further report the concerns to the Head of Internal Audit.

Workers may alternatively choose to make a report directly to an appropriate external regulatory authority. However, they should remain cognisant of their confidentiality duty to the Department of Justice and Equality and should consider whether by-passing the internal procedures is a reasonable course of action.

Reports or concerns expressed anonymously will be considered at the discretion of the Head of Internal Audit. In exercising this discretion the Head of Internal Audit will take the following into account:

- The seriousness of the issues raised
- The credibility of the concern
- The likelihood of confirming the allegation from attributable sources

Anonymous reports will be taken seriously however the effectiveness of any investigation may be limited where an individual chooses not to be identified. The Department of Justice strongly encourages staff to identify themselves in making a report to facilitate the investigation.

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Workers should not endeavour to find proof of their suspicion, if their concern is based on a reasonable belief, the worker should report under this policy.

8 How to Report:

As may be appreciated, written correspondence is preferred to verbal as there is less scope for misunderstandings arising. Verbal correspondence will be accepted but it should be noted that verbal correspondence **may** carry less weight in considering whether the issue should be forwarded for full investigation.

The report can be submitted on the template at Appendix 2 and should include the following at a minimum:

- Date submitted:
- Subject:
- Detail of Concern:
- Detail of whether the concern was previously raised and to whom:

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

9 To Whom to Report:

Reports should be submitted to appropriate person as outlined in section 8 above. Where it is intended to communicate the concern directly to the Head of Internal Audit then the report can be forwarded to:

The Head of Internal Audit
51 St Stephen's Green
Dublin 2
Phone: 01 6028499
Email: audit@justice.ie

10 Process of Assessment and Investigation

The objective of an investigation is to ascertain whether or not, the concerns reported have occurred. The Department of Justice will ensure that Investigators will at all times be cognisant of, and comply with principles of natural justice.

10.1 Procedures for Handling, Assessing and Investigating Reports

In all instances where a report has been made under this policy, a record will be made of its receipt and a file opened.

- All written reports submitted by a named worker will be examined.
- Verbal reports will be examined if the appropriate person or the Head of Internal Audit considers that there is enough information supplied to carry out an investigation. Anecdotal evidence may

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not be considered strong enough to undertake an investigation. Verbal reports will be documented by the recipient.

- Anonymous reports will be examined subject to the discretion of the Head of Internal Audit.

In exercising this discretion the factors that may be taken into account would include:

- The seriousness of the issues raised
- The credibility of the concern
- The likelihood of confirming the allegation from attributable sources

In line with the reporting cascade, the issue will be investigated by the line manager reported to or s/he will refer the matter to the Head of Internal Audit who will organise for the issue to be investigated by either by a member of the Internal Audit Team (for simple issues), or by appropriate qualified professionals – either internal or external personnel. Where it is proposed to refer the matter to an internal person, other than a member of the Internal Audit Team, for investigation, the worker reporting the concern will be notified of the name of the investigating person and may request, if not comfortable with the named individual investigating the claim, that the matter be referred to another person.

If not already notified under the previous paragraph, the person who has made the disclosure will be advised of the name and contact details of the person (internal or external) who is handling the matter and may be asked to provide additional assistance if required.

10.2 Initial Examination

If, on preliminary examination, the allegation is judged to be wholly without substance or merit, the allegation may be dismissed and the person who made the report will be informed.

If, on preliminary examination, there appears to be prima facie substance to the allegation, the matter may:

- Be the subject of a full investigation;
- Be referred to an outside body, including An Garda Síochána.
- Be referred to the Human Resource unit for investigation under the appropriate Human Resource policy.

10.3 Full Investigation

Any disclosures forwarded for full investigation will be thoroughly investigated including interviews with all the witnesses and other parties involved. Statements from all parties shall be recorded in writing and a copy given to the interviewee for confirmation.

The Department will need to take great care in providing information to the person who has made the disclosure to ensure that it does not breach the legal rights of any person who has been accused of wrongdoing. Providing information to the person who has made the disclosure might compromise the investigation of the case in some circumstances. The worker who has made the disclosure will be provided with periodic feedback for purposes of reassurance that the investigation is being progressed. At the conclusion of the process the worker who has made the disclosure will be informed of the general outcome of the investigation.

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It is important to note that the principles of natural justice do not require a person associated with an allegation of wrongdoing to be notified of the **receipt** of an allegation. Nor does the person accused of wrongdoing have the right to know the identity of the worker who has made the report.

Where an investigator wishes to question or seek information from the person accused of wrongdoing, the subject is entitled to be given details of what is alleged and given the opportunity to respond and to contest the allegation.

In the interests of natural justice, the person(s) against whom the allegation is made will be informed in writing of the allegation and all of the supporting evidence, and will be allowed full opportunity to comment at an appropriate stage in the process and before the investigation is concluded.

The person accused of wrongdoing is entitled to be informed of the outcome of the investigation and is entitled to a copy of the investigation report **if** it concludes that a wrongdoing has occurred.

11 Confidentiality

All reasonable efforts will be made to keep the identity of the person making a report confidential. However it is important to be aware that it may not be possible to keep the identity confidential as in certain circumstances, the person may be required to co-operate with investigating authorities or, for example, give evidence in Court or to another forum. However, in accordance with the objective of section 16 of the Protected Disclosures Act 2014, the identity of the persons making a disclosure will be protected and it will be a disciplinary offence for persons to disclose improperly the identity of such a person or to seek to establish the identity of a person who has made a disclosure.

A worker should not hesitate to contact the Internal Audit Unit for informal discussion in relation to the process of reporting and of conducting investigations under this policy.

If a worker is unsure whether to use the procedure or s/he wants independent advice at any stage, s/he is encouraged to obtain external independent advice. [Transparency International Ireland](#) provides independent advice to workers.

12 Protection from Penalisation

All reasonable steps will be taken to protect workers from penalisation for having made a Protected Disclosure

Workers should inform the Head of Internal Audit if they have experienced any act of penalisation by any employee of the Department as a result of having made a protected disclosure.

The Department of Justice and Equality will not tolerate any penalisation of workers who make a report under this policy and will treat any acts of penalisation or attempted penalisation as serious misconduct under the Civil Service Disciplinary Code, or where the Code does not apply, as a serious disciplinary matter.

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13 Outcomes following an investigation

The following are potential outcomes on conclusion of the investigation of the matter disclosed;

The disclosure is upheld or partly upheld leading to:

- The malpractice being stopped and the system weaknesses identified and addressed or the concern being addressed in so far as is reasonable
- Disciplinary action being taken under the Civil Service Disciplinary Code against the wrongdoer depending on the results of the investigation
- The matter being referred to an outside body, including An Garda Síochána.

The disclosure is not upheld:

- No action if the allegation made in good faith, proves unfounded.
- Action under the Civil Service Disciplinary Code being considered against the reporter in the event of the claim being found to be malicious or otherwise in bad faith

If the outcome of the investigation of a disclosure is not to the satisfaction of the worker that reported the issue, then s/he has the right to make a disclosure to the appropriate legal or investigative agency outside of the Department in line with the provisions of the Protected Disclosures Act 2014.

14 Review Process

If the worker who has made the disclosure is not satisfied with the outcome of the investigation, the Department will engage an external reviewer to re-evaluate the findings and consider any additional evidence provided.

15 Responsibilities

All workers	To ensure that reports are made where appropriate; and that they are valid.
Line Managers	To investigate and to follow the appropriate steps once a report is made. Line management must also send outline details of the Protected Disclosures to Internal Audit for statutory reporting purposes
The Head of Internal Audit	To investigate, or organise an investigation, and to follow the appropriate steps once a report is made. This is subject to the Head of Internal Audit being satisfied that the concern merits investigation.
Human Resources	To ensure that all workers are informed of the Protected Disclosures Reporting Policy annually.
Investigator (if appointed)	To investigate and to follow the appropriate steps once a report is made and to report to the Head of Internal Audit as appropriate.
Management Advisory Committee	To review and assess how the policy is working and to make adjustments to policy as appropriate.

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16 Monitoring and Review

Confidential records will be kept of all matters raised through this Protected Disclosures Policy and the Management Advisory Committee will receive periodic reports on its effectiveness.

The Policy forms part of the internal control procedures and as such will be reviewed and updated (if necessary) on a regular basis as part of the review of internal controls and procedures. Any changes will be notified to staff.

17 Annual Report.

The Head of Internal Audit will prepare and publish an Annual Report, on an anonymised basis, in relation to the disclosures received and dealt with under this policy in the previous year in line with the requirements of section 22 of the Protected Disclosures Act 2014. This report is to be “in a form that does not enable the identification of the persons involved”.

18 Context of this Policy: The Protected disclosures Act 2014

The purpose of the Protected Disclosure Act 2014 is to provide a robust statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the workplace in the knowledge that they can avail of significant employment and other protections if they are penalised by their employer or suffer any detriment for doing so.

The Protected Disclosures Act 2014 provides for a stepped system of channels through which a worker can make a disclosure if **s/he wishes to attract the protections under the act**. A worker may communicate his or her concerns to

- **An employer (Section 7 and Section 8 of this Protected Disclosures Policy)**
- To a prescribed person as set out in Statutory Instrument 339 of 2014 (Protected Disclosures Act 2014 (Section 7(2) Order 2014). This is a formally designated person that can receive a report in respect of matters in their sphere of responsibility e.g. the Director General of the Environmental Protection Agency can receive reports on all matters relating to the protection of the environment in the State.
- To a Minister of the Government (regarding a matter within their functional ambit or in the case of a worker in a Public Body)
- Externally to others e.g. reporting to the Comptroller and Auditor General, or to a public representative etc.

This is the context in which our Protected Disclosures policy sits. A worker is encouraged to use the internal confidential reporting structure in the first instance. It is only if the internal structures fail the worker or the worker does not have confidence in the internal structures that the worker may feel obliged to report an issue outside of the organisation. In this case, the worker is afforded some protection under the Protected Disclosures Act 2014.

It should be noted that there are certain prerequisites for entitlement to redress under the act, being:

- That the worker has been penalised or is threatened with being penalised at the hands of the employer for having made a disclosure

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- That the disclosure is a protected disclosure under the terms of the act (this will not be known at the time the disclosure is made)

19 Data Protection

The Department of Justice & Equality policy on Data Protection will be complied with in relation to information and documentation collated in the course of an investigation.

Ends

Appendix 1 – Details of Offices/Agencies that have adopted the policy

Executive Offices or Agencies, who have adopted the policy, are recorded here.

Unit/ Agency	Date Adopted	Comment
Charity Regulation Authority	29/04/2015	
Forensic Science Ireland	29/04/2015	
Irish Film Classification Office	29/04/2015	
Insolvency Service of Ireland	23/04/2016	
National Property Services Regulatory Authority	08/05/2015	
Office of the Data Protection Commissioner	23/04/2015	
Office of the Refugee Applications Commissioner	18/05/2015	
Office of the State Pathologist	05/05/2015	
Private Security Authority	26/06/2015	The Private Security Authority has adopted the Protected Disclosures Policy of the Department of Justice and Equality as its policy on protected disclosure in the workplace. Where this document mentions the Department of Justice and Equality this can be read as the Private Security Authority. The chief Executive shall make an annual report on the policy and its implementation to the Board of the Private Security Authority.
Probation Service	29/04/2015	
Reception and Integration Agency	20/05/2015	
Refugee Appeals Tribunal	18/05/2015	

Appendix 2 – Protected Disclosures Reporting Form

Protected Disclosures Reporting Form

The Department of Justice and Equality welcomes the reporting of disclosures under the Protected Disclosures Policy. The Protected Disclosures Policy is part of the Departments approach to good governance as it seeks to deter, prevent and detect fraud and other significant malpractices.

Before completing this form, you should:

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

Reports should be submitted to appropriate person (through line management) as outlined in the Protected Disclosures Policy. Where it is intended to communicate the concern directly to the Head Internal Audit then the report can be forwarded to: The Head of Internal Audit, 51 St Stephen’s Green, Dublin 2, Phone: 01 6028499, Email: audit@justice.ie

Name of Worker reporting the concern: (Anonymous reports will be considered but are not encouraged)	
Phone number:	
Email Address	
Details of Concern/Disclosure including dates, if applicable: (Care should be taken to only include the name(s) of individual(s) directly relevant to the report.)	
Has the concern been reported previously: (if so please specify when and to whom)	