

# Protected Disclosure (Whistleblowing) Policy

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# 1 INTRODUCTION

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The Educational Research Centre (ERC) is committed to maintaining an open culture with the highest standards of honesty and accountability where our workers can report any concerns in confidence.

Whistleblowing is the term used when a worker raises a concern about a relevant wrongdoing, illegal practices or unethical conduct such as possible fraud, crime, danger or failure to comply with any legal obligation which came to the worker's attention in connection with the worker's employment.

The Protected Disclosures Act 2014 was enacted on 15 July 2014. The purpose of the Act is to provide a statutory framework within which workers can raise concerns and disclose information regarding potential wrongdoing that has come to their attention, in the course of their work, 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 Act provides that protected disclosure can be made internally to the worker's employer, or externally, such as to a prescribed person, Minister or Commissioner for Protected Disclosures.

It is important to note that in order to enjoy the protections of the Act, disclosures must be made in accordance with the provisions set out in the Act.

In July 2022, the Protected Disclosures (Amendment) Bill 2022 was signed into Law and transposed the EU Directive 2019/1937 on the protection of persons who report breaches to Union Law. The Bill amends the Protected Disclosures Act 2014 and provides for a significant expansion of its scope to include protections for volunteers, shareholders, board members and job applicants.

The Bill also establishes a new Office of the Protected Disclosures Commissioner in the Office of the Ombudsman to support the operation of the new legislation.

The ERC takes all wrongdoings very seriously and this protected disclosure policy (also commonly referred to as a 'Whistle Blowing' Policy) is intended to encourage and enable workers to raise concerns within the workplace rather than overlooking a problem or "blowing the whistle" externally.

## 2 PURPOSE AND POLICY STATEMENT

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The purpose of this policy is to encourage individuals to make a disclosure in respect of significant matters, and to provide protection for the person making the disclosure, if they reasonably believe that the information in the disclosure is substantially true.

This policy is intended to apply to major concerns that an individual may have regarding any aspect of the ERC's activities, or the conduct of other members of the ERC community, that is not properly addressed within the scope of other ERC policies.

Under this policy, a worker is entitled to raise concerns or disclose information, without fear of penalisation or threat of less favourable treatment, discrimination or disadvantage. Individuals should feel confident that wrongdoings can be reported and dealt with in a clear, formal and safe manner and the ERC will not tolerate the penalisation of anyone who discloses information in line with this policy.

The ERC is committed to addressing concerns raised in an effective and timely manner.

Employees should note that this policy does not form part of any employee's contract of employment and it may be amended at any time.

## 3 WHAT IS A PROTECTED DISCLOSURE

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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.

The key terms "worker", "relevant wrongdoing", "reasonable belief", "work-related context" and the kind of information that is required in a report are explained below.

The term 'in a manner prescribed in the Act refers' to the requirements that attach to making disclosures to different bodies or persons.

These are designed to encourage workers to make disclosures to their employer in the first instance, to specified third parties in certain other circumstances and, as a last resort, in the public domain.

## 4 REQUIREMENTS FOR THE DISCLOSURE

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### 4.1 4.1 DISCLOSURE OF INFORMATION

A protected disclosure should contain information which tends to show relevant wrongdoing. Such information must be relevant i.e. it must be information that comes to the attention of the

worker in a *work-related context* and in the reasonable *belief* of the worker, tends to show one or more *relevant wrongdoings* and that the allegations are *substantially true*,

For a disclosure to be protected under the Act, it must convey facts, a bare allegation or an expression of concern that is based on suspicion and not founded on anything tangible will not be protected.

Disclosing information in relation to alleged wrongdoing in accordance with the Act is also referred to as “making a report” or “making a disclosure”.

#### 4.2 REASONABLE BELIEF

The term *reasonable belief* does not mean that the belief has to be correct. Workers are entitled to be mistaken on their belief, so long as their belief was based on reasonable grounds, i.e. there was an objective basis for their belief.

#### 4.3 SUBSTANTIALLY TRUE

In the case of external disclosures, there is an additional requirement that must be met for a protected disclosure.

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

#### 4.4 WORK-RELATED CONTEXT

The information disclosed must come to their attention in a “work related context”.

A work-related context means current or past work activities through which, irrespective of the nature of these activities, the Reporting Person acquires information concerning a *relevant wrongdoing*.

Such information need become known as part of a worker’s duties or relate to their employer/contractor. The possibility of penalisation occurring for reporting such information will be a factor in determining whether the context is a work-related context.

## 5 RELEVANT WRONGDOINGS

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A protected disclosure under this policy involves the disclosure of information which an individual reasonably believes demonstrates a suspected wrongdoing or danger at the ERC. The wrongdoing may be happening now, or may have taken place in the past or be about to happen. A protected disclosure may include information in relation to:

- the commission of an offence;
- failure to comply with any legal obligation;
- breaches of certain Union Laws;
- miscarriages of justice;

- endangering of the health and safety of an individual;
- damage to the environment;
- unlawful or improper use of funds and/or resources of a public body, or of other public money;
- an act or omission of a public body which is oppressive, discriminatory, grossly negligent or constitutes gross mismanagement;
- a breach or omission that is unlawful and falls within the scope of certain EU legislation (e.g. Public Procurement, Data Privacy etc.) or
- the fact that information tending to show any matter falling within any of the above matters has been, is being or is likely to be concealed or destroyed.

Wrongdoings can take place in or outside of Ireland.

## 6 WHAT IS NOT A RELEVANT WRONGDOING

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This policy and procedures apply to disclosures of relevant wrongdoings as defined in the Act. Disclosures that do not meet these requirements are excluded from these procedures.

Protected disclosures can only be made by workers and must meet the requirements under the Act (as set out in the following sections).

A matter is not a relevant wrongdoing if it is a function of the worker, or of the ERC to detect, investigate or prosecute and does not involve an act or omission on the part of the ERC.

These procedures do not substitute day to day operational reporting or other employment procedures and though a worker is not obligated to make a protected disclosure, they are not absolved from any mandatory obligations to report that may be contained in other legislation.

### 5.1 Protected disclosures vs personal grievances

This policy should not be used for complaints relating to an individual's personal circumstances or arising out of their work at the ERC, such as:

- the way they have been treated at work (e.g. interpersonal grievances/conflicts with another worker),
- their contract of employment, duties terms and conditions or working conditions.
- Matters concerning a complaint by a worker about their employer which concerns the worker

In those cases the individual should use the ERC's appropriate internal processes.

This policy is not designed to be used to re-open any matters that have been addressed under other ERC policies nor should it be viewed as an alternative to those procedures in respect of matters that would more appropriately be considered under them.

IF, however, such matters could apply to other workers, they may be considered to be a relevant wrongdoing for the purposes of the Act and be treated as a protected disclosure by the relevant employer.

## 7 RELEVANT PERSONS

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This policy and procedures apply to all workers who have acquired information on a relevant wrongdoing in the course of their work.

For the purpose of this policy, and as detailed by the legislation, an individual is classified as a “worker” (i.e. Relevant Person) if they fall within one of the categories listed below:

- Employees or former employees
- Trainees (including unpaid trainees), apprentices, as well as non-paid workers such as interns, students on work experience and volunteers,
- People working under a contract for services
- Independent contractors
- Agency workers
- Board and ARC members
- Shareholders
- Job applicants

You will also be protected under the Acts if you make an anonymous disclosure but your identity becomes known and you are penalised for having made a protected disclosure.

Are not required or entitled to investigate matters themselves to find proof of their concerns of wrongdoing and should not endeavour to do so.

The person making the disclosure is also known as the “**Reporting Person**”.

## 8 MOTIVATION OF THE REPORTING PERSON

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The motivation of a worker when making a disclosure is irrelevant when determining whether or not it is a protected disclosure. The ERC will deal with all disclosures regardless of the worker’s motivation when making a disclosure.

Where a worker has made a report, whether or not that has been assessed or investigated, the worker is still required to conduct themselves professionally and to continue to carry out their duties as normal.

A disclosure of a wrongdoing does not confer protection or immunity on a worker in relation to any involvement that they may have had in that wrongdoing.

It is a criminal offence to make a protected disclosure which contains information a worker knows to be false. If it transpires that a worker makes a disclosure which they know to be false or do not believe to be true, they may face disciplinary action in line with the ERC’s procedures.

A person who suffers damage resulting from the Reporting Person knowingly reported false information, has a right of action in tort against the Reporting Person.

## 9 REPORTING CHANNELS FOR REPORTING PERSONS

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The Act provides for a number of channels for those who wish to make a protected disclosure. Disclosures should be, wherever possible, made at workplace level to the most appropriate person.

However, the Act provides for a tiered disclosure regime with a number of options for Reporting Persons, both internal and external to the workplace, as internal disclosures may, in some circumstances, be inappropriate.

### 9.1 INTERNAL DISCLOSURE

It is in the best interests of all concerned in the ERC — management, workers and their representatives — that disclosures about potential wrongdoing are managed internally. The earlier the concern is expressed, the easier it will be for the organisation to deal with the matter quickly.

Section 6 of the Act provides for direct disclosure to the employer and this policy recognises the strong value of this approach. A worker may make a protected disclosure to their employer where they reasonably believe that information being disclosed shows or tends to show wrongdoing.

The employer is the person with whom a worker is/has or work/worked under a contract of employment. For an agency worker, this concerns the person for whom the work work/worked or the person (such as the agency) who supplied them.

It is recommended that persons considering making a protected disclosure consider the option of seeking appropriate advice before doing so and after making a report.

#### ***Independent Support and Advice***

Transparency International Ireland operates a confidential free-phone service and Legal Advice Centre for anyone considering reporting a concern or making a protected disclosure. The *Speak Up* helpline operates from 10am to 6pm Monday to Friday.

Contact details:

**Freephone:** 1800 844 866

**Email:** [helpline@transparency.ie](mailto:helpline@transparency.ie) or via encrypted email to [trachelpdesk@hushmail.com](mailto:trachelpdesk@hushmail.com)

**Website:** [www.speakup.ie](http://www.speakup.ie) **Speak Up Safely Guide**

### 9.2 EXTERNAL DISCLOSURE

The Act allows a worker to make a disclosure to persons other than their employer in certain circumstances. These external channels are set out below and summarised in Appendix 1.

### *A) Other Responsible People*

The disclosure to other responsible people applies to situations where a worker reasonably believes that the wrongdoing relates to the conduct of a person other than their employer, or to something for which that other person (i.e. the person doing the wrongdoing) has legal responsibility.

### *B) Prescribed Person*

Under Section 7 of the Act, certain persons are prescribed by the Minister for Public Expenditure and Reform to receive protected disclosures (Prescribed Persons).

Most Prescribed Persons are heads of statutory regulatory or supervisory authorities and the list of prescribed persons and the matters in which they are prescribed is set out in legislation at S.I. No. 367/2020 - Protected Disclosures Act 2014 (Disclosure to Prescribed Persons) Order 2020 ([irishstatutebook.ie](http://irishstatutebook.ie))

The following requirements must be met for such disclosures to qualify as a protected disclosure:

- *The relevant information came to the worker's attention in a work-related context*
- *The worker has a reasonable belief that the information tends to show relevant wrongdoing*
- *The worker has a reasonable belief that the relevant wrongdoing falls within the matters in which the Prescribed Person is prescribed, and*
- *The worker has a reasonable belief that the information disclosed, and any allegation contained in it, are substantially true.*

If a Prescribed Person determines that a report that is has received does not fall within their remit as a prescribed person but may fall within the description of matters in respect of which another person is prescribed, the matter will be referred to that prescribed person or, where there is no such other prescribed person, the Protected Disclosures Commissioner.

### *C) A Minister of the Government*

The Act provides that if a worker is or was employed in a public body, they may make a disclosure to a relevant Minister.

In general, this will be the Minister for the parent department of the public body. In the case of the ERC, this is the Minister for Education.

For such a disclosure to be protected under the Act, the following conditions must be met:

- the relevant information came to the worker's attention in a work-related context;
- the worker has a reasonable belief that the information tends to show relevant wrongdoing;
- the worker is or was employed in a public body; and

- at least one of the following conditions is met:
  - (i) the worker has reported internally or externally (or both) but they have not been provided with feedback or, if they have received feedback, the worker reasonably believes that there has been inadequate follow-up action;
  - (ii) the worker reasonably believes that the head of the public body concerned is complicit in the relevant wrongdoing; or
  - (iii) the worker reasonably believes that the relevant wrongdoing may constitute an imminent or manifest danger to the public interest.

D) *The Office of the Protected Disclosures Commissioner*

The Protected Disclosures (Amendment) Act 2022 provides for the establishment of the Office of the Protected Disclosures Commissioner (the “Commissioner”), within the Office of the Ombudsman [www.ombudsman.ie](http://www.ombudsman.ie). 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) and will effectively act as recipient of last resort in respect of certain reports, i.e., where no prescribed person or other suitable person can be identified.

E) *A legal adviser*

The Act provides that a disclosure of relevant information will be protected if it is made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in section 6 of the Trade Union Act 1941).

F) *Disclosure to relevant institutions, bodies, offices, or agencies of the European Union*

Section 7B of the Act provides that a worker can report a relevant wrongdoing which is a breach of the European Union (EU) laws listed in the Directive 2019/1937 (on the protection of persons who report breaches of EU law) to a relevant institution, body, office, or agency of the EU.

G) *Alternative external disclosures (in very limited circumstances)*

It is preferable in most circumstances for a worker to make a disclosure directly to their employer and, if that is not appropriate, to one of the other external disclosure options set out above. It will rarely be appropriate to make alternative external disclosures, such as to the media, where the disclosure could be dealt with through one of these options. There are stringent additional requirements for alternative external disclosures to qualify as protected disclosures under section 10 of the Act.

The Act also makes particular provision for making disclosures in the areas of law enforcement, security, defence, international relations, and intelligence.

## 10 REPORTING CHANNELS FOR REPORTING PERSONS

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The Act obliges recipients of disclosures to protect the identity of the worker/Reporting Person making the disclosure. The protections that QQI has in place are set out below.

### 10.1 MEASURES IN PLACE TO PROTECT IDENTITY

Any person in the ERC who receives a report of a protected disclosure or with whom a report is shared to allow them carry out their functions in relation to the report, will not disclose the identity of the Reporting Person to anyone else (or any information that might reveal the identity of the Reporting Person) without the explicit consent of the Reporting Person, other than strictly within the provisions permitted in the Act which are explained below, in Section 9.3.

At all times, the ERC will focus on the information in the disclosure rather than the identity of the worker making the disclosure.

Those within the ERC must not attempt to identify a Reporting Person if their identity has not been revealed to them in accordance with these procedures. A breach of confidentiality is a disciplinary offence and will be treated under the ERC's disciplinary process.

The Designated Person may consider that it is necessary to share the identity of the Reporting Person on a 'need-to-know' basis and only for the purposes of the receipt, transmission or follow-up of the report.

This can include a member of a team involved in follow-up assessment or investigation of the report and a staff member who may have the necessary technical expertise to assist with the assessment and investigation of the report.

Such other persons cannot disclose the identity of the Reporting Person, or any reveal any information that might reveal their identity.

The ERC will maintain reports and records of protected disclosures on independent, secure IT systems and, where necessary, physical locations with controlled access to authorised persons responsible for any action in relation to a disclosure.

Disclosures will be kept secure and, in a form, that

- Ensures the completeness, integrity and confidentiality of information.
- Does not endanger the confidentiality of the worker who makes the disclosure.
- Prevents access to the information by persons other than Designated Persons and any other authorised members of staff.
- Allows the secure retention of information to allow any necessary further investigation to be carried out.

Where any action is to be taken following the receipt of a protected disclosure, a process will be put in place for consulting with the Reporting Person and, where possible, for gaining their informed consent, prior to any action being taken that could identify them. This may include when disclosures are being referred by the ERC to an external party for the purpose of an

investigation.

## 10.2 IDENTITY OF A PERSON CONCERNED

Under the Act, the ERC is also required to protect the identity of any person referred to in the report of a disclosure as a person to whom the wrongdoing is attributed or associated with (known as a “person concerned”). Their identity will be protected for as long as any investigation triggered by the report is ongoing, unless disclosure of the identity is necessary for the purposes of the Act or is otherwise required by law.

## 10.3 EXCEPTIONS WHEN IDENTITY CAN BE DISCLOSED

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

- The person to whom the protected disclosure was made or transmitted shows that they took all reasonable steps to avoid such disclosure
- The person to whom the disclosure was made or transmitted had a reasonable belief that it was necessary for the prevention of serious risk to the security of the State, public health, public safety, or the environment or for the prevention of crime or prosecution of a criminal offence
- Where the disclosure is otherwise required by law
- Where the disclosure is a necessary and proportionate obligation imposed by EU law or the law 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 - this relates to a statutory or criminal investigation or judicial proceedings. It does not relate to internal investigations conducted by the public body or prescribed person
- Where it is decided that it is necessary to disclose the identity of the Reporting Person or other information that may or will disclose the identity of the Reporting Person, in the cases referred to at (b) or (d) above, the Reporting Person will be informed of this decision in advance of the disclosure, and the reasons for the disclosure, unless the notification would jeopardise:
  - (i) the effective investigation of the wrongdoing;
  - (ii) the prevention of serious risk to the security of the State, public health, public safety, or the environment; or
  - (iii) the prevention of crime or prosecution of a criminal offence.

If any decision is taken that it is necessary to disclose information that may or will disclose the identity of the Reporting Person, the Reporting Person will be informed of this decision in writing

advance of the disclosure, except in exceptional cases set out above.

Note that a Reporting Person is, subject to the limitations explained above, entitled to a review of any such decision to disclose their identity.

#### 10.4 COMPLAINTS OF FAILURE TO PROTECT A DISCLOSER'S IDENTITY

If a Reporting Person is concerned that their identity is not being protected by the ERC, this should be raised immediately.

Concerns and complaints of a breach of confidentiality under these procedures should be made to ERC's Head of Corporate Services. All complaints will be assessed and, where warranted, investigated and appropriate action where necessary will be taken.

## 11 ANONYMOUS DISCLOSURE

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An anonymous disclosure is a case where the Reporting Person withholds their identity. Confidential disclosures concern the protection of the identity of the Reporting Person.

Although a Reporting Person is encouraged to identify themselves when making a disclosure, whenever possible, anonymous disclosures are included in the scope of the Act.

It should be noted that a worker making an anonymous disclosure cannot obtain redress where they have been penalised, unless they identify themselves.

The ERC will act upon such disclosures to the extent that this is possible, however the ERC may not be fully able to investigate an anonymous disclosure without knowing the identity of the Reporting Person.

In such cases, the ERC encourages workers to provide as much information as possible in relation to the alleged wrongdoing. Reporting Persons are asked to provide an anonymous email address so that the ERC can communicate with them and seek further information, if necessary to deal with the disclosure effectively.

Workers are advised to consider the option of seeking independent advice before making a disclosure.

#### 11.1 LIMITATION ASSOCIATED WITH ANONYMOUS DISCLOSURES

The ERC may be restricted in its ability to investigate matters in case of anonymous disclosures.

Important elements of these procedures, such as keeping the Reporting Person informed and protecting a Reporting Person from penalisation, may be difficult or impossible to apply unless the Reporting Person discloses their identity.

The ERC will have discretion to investigate anonymous disclosures, taking into account the

seriousness of the issues raised, the credibility of the concern and the capacity of the ERC to investigate an anonymous allegation.

The person receiving an anonymous disclosure shall record in a manner they deem appropriate, the receipt or transmission of the disclosure, and such information relating to the disclosure that the person receiving the report considers necessary and appropriate for the purposes of the Act, so that this is available should the person making the report be subsequently identified and penalised. For example, this could include the details of the wrongdoing disclosed and the identity of other persons referred to in the disclosure.

Any individual who subsequently identifies themselves as the discloser will be afforded protection under this policy.

## 12 PROTECTION FROM PENALISATION

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Penalisation of a Reporting Person, facilitator who assists the Reporting Person in the reporting process, and connected persons is a criminal offence under the Act.

Penalisation means any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report, and which causes, or may cause, an unjustified detriment to a worker (Section 3(1) of the Act).

Penalisation may, for example, take the form of (please note the list is non-exhaustive):

- Suspension, lay-off or dismissal,
- Demotion or loss of opportunity for promotion,
- Transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- The imposition or administering of any discipline, reprimand, or other penalty (including a financial penalty),
- Coercion, intimidation, or harassment,
- Discrimination, disadvantage, unfair treatment,
- Injury, damage, or loss,
- Threat of reprisal
- Withholding of training
- A negative performance assessment or employment reference
- 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 permanency,
- Failure to renew or early termination of a temporary employment contract;
- Harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income;
- 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

- Early termination or cancellation of a contract for goods or services
- Psychiatric or medical referrals.

The Act sets out a range of criminal offences for breaches of the protections provided by the Act (section 14A). Any person proven to have been involved in or contributing to penalisation; hindering a worker in making a report; breaching the duty of confidentiality regarding the protection of the identity of the Reporting Person; bringing vexatious proceedings or making knowingly false disclosures may face criminal penalties.

## 12.1 PROTECTION PROVIDED BY THE ERC

The ERC will not subject a worker to detriment on the grounds that they have made a disclosure in accordance with the Act and these procedures.

In the event that penalisation does occur the worker should avail of the following avenues of complaint:

### *A) Internal Avenue*

Under the Act, the obligation not to penalise or threaten penalisation against a Reporting Person lies with the employer. Employers are obliged to address complaints of penalisation made by Reporting Persons. Penalisation can be an omission as well as an act, and a failure to investigate a complaint of penalisation may constitute further penalisation.

### *B) External avenues of redress and timelines*

A Reporting Person who believes that they have been penalised for making a protected disclosure may make a claim of penalisation before the Workplace Relations Commission (WRC) and/or make a claim for interim relief in the Circuit Court. The relevant time limits that apply are as follows:

- A penalisation claim must be submitted to the WRC within 6 months of the act of penalisation. In such claims, the alleged penalisation shall be deemed to have been as a result of the Reporting Person having made a protected disclosure unless the employer proves that the act or omission was justified on other grounds.
- An application to the Circuit Court for interim relief must be made within 21 days of the last instance of penalisation.

Workers are advised to consider seeking independent advice with regard to penalisation or the failure of an organisation to adequately respond to a protected disclosure.

## 13 WITHDRAWAL OF A PROTECTED DISCLOSURE

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Once a protected disclosure has been made in accordance with the Act, it is not possible for a Reporting Person to withdraw the disclosure.

Reporting Persons are required under the Act to co-operate with a Prescribed Person, the Commissioner, or a person to whom a report is transmitted.

Where co-operation is withdrawn or the Reporting Person seeks to withdraw a protected disclosure, public bodies and prescribed persons are still required to comply with the provisions of the Act, to the greatest extent possible.

Should the Reporting Person cease to co-operate with the protected disclosure process, this may make follow-up, including any investigation, more difficult.

## 14 CRIMINAL PROCEEDINGS

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Making a disclosure containing any information which you know to be false is a criminal offence. If found guilty in the [District Court](#), you can be fined up to €5,000, imprisoned for up to 6 months or both. More significant penalties apply if you are convicted in a higher court.

If you are charged with unlawfully disclosing information, it is a defence that you were making what you reasonably thought to be a protected disclosure.

## 15 ANNUAL REPORT

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In accordance with section 22 of the Protected Disclosures (Amendment) Act 2022, a report on protected disclosures will be issued to the Minister of Public Expenditure and Reform no later than 1<sup>st</sup> March each year for the preceding year

The report must also be published on the ERC website by 30<sup>th</sup> March each year and included in its Annual Report.

## 16 RECORD KEEPING, DATA PROTECTION AND FREEDOM OF INFORMATION

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### *A) Freedom of Information*

The Freedom of Information Act 2014 does not apply to any records relating to disclosures made in accordance with the Protected Disclosures Act, irrespective of when they were made.

### *B) Data protection*

All personal data will be processed in accordance with applicable data protection law, including the General Data Protection Regulation (GDPR) and the ERC's Data Protection policy.

This applies to the receipt, assessment, transmission and referral of a protected disclosure for investigation. In addition, all records of disclosures will be securely maintained and processed in accordance with the provisions and requirements of section 16 of the Act.

It is important to note that section 16B of the Protected Disclosures Act imposes certain restrictions on data subject rights, as allowed under Article 23 of the GDPR.

Where the exercise of a right under GDPR would require the disclosure of information that might identify the Reporting Person or Persons concerned, or prejudice the effective follow up of a report, exercise of that right may be restricted.

Rights may also be restricted to the extent, and as long as, necessary to prevent and address attempts to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations, or attempts to find out the identity of Reporting Persons or persons concerned.

If a right under GDPR is restricted, the data subject will be given the reasons for the restriction, unless the giving of such reasons would identify the Reporting Person or Persons concerned, or prejudice the effective follow up of a report, or prejudice the achievement of any important objectives of general public interest as set out in the Act.

A person whose data subject rights are restricted can make a complaint to the [Data Protection Commissioner](#) or seek a judicial remedy in respect of the restriction.

The following types of personal data may be processed by ERC in accordance with this policy:

- personal data (e.g., name(s), contact details, expressions of opinion, records of incidents involving workers or other parties)
- special categories of personal data (e.g., data relating to racial/ethnic origin, religious or philosophical beliefs, trade union membership, data concerning health, sex life or sexual orientation)
- personal data relating to criminal convictions and offences.

The ERC may need to share or disclose personal data it obtains, in connection with a disclosure, with internal parties or external parties (such as An Garda Síochána), on a strictly necessary basis in order to investigate and appropriately follow up on a disclosure in accordance with this policy. The data protection legislation requires that personal data are deleted as soon as the data are not required for the purpose for which the data has been collected.

Personal data collected and processed in accordance with these procedures will only be maintained for as long as is reasonably required and in line with data retention principles or, if the investigation leads to disciplinary procedures by a worker's employer or other action, until the information is no longer required for this purpose.

Any questions and requests regarding rights of access, rectification or restriction under the data protection legislation and the ERC's data processing practices may be referred to the ERC Data Protection Officer.

### *C) Record Keeping*

A record of all reports – including all anonymous reports – will be kept.

Where a report is made via a physical meeting with an authorised member of staff, the report shall be documented by way of accurate minutes of the conversation taken by the person who receives the report. The Reporting Person shall be afforded the opportunity to check, rectify and agree these minutes.

These minutes will be saved in the same manner as the report.

## 17 FORMAT OF A DISCLOSURE

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A disclosure should be made in writing (where a disclosure is made verbally, it will be documented by the recipient and agreed with the discloser).

Reports setting out concerns should be factual (to the best of their knowledge) and should, at a minimum, include the following details (to the extent that such information is known to the individual in relation to a wrongdoing that has occurred, is occurring or is likely to occur):

- that the disclosure is being made under the ERC's Protected Disclosure policy
- the Reporting Person's name, position in the organisation, place of work and confidential contact details
- the type of alleged wrongdoing
- the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified
- whether or not the alleged wrongdoing is still ongoing
- whether the alleged wrongdoing has already been disclosed and if so, to whom, when and what action was taken
- information in respect of the alleged wrongdoing (what is occurring/ has occurred and how) and any supporting information
- 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 expose the wrongdoing disclosed)
- any other relevant information.
- Date of the report

Care must be taken to only include information directly relevant to the disclosure. A worker is not required to investigate matters or find proof of the wrongdoing and should not endeavour to do so. All workers need to do, and should do, is disclose the information that they have, based on a reasonable belief that it discloses a wrongdoing and, where the information relates to individuals, that it is necessary to disclose that information.

## 18 HOW THE REPORT IS DEALT WITH

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The Protected Disclosures (Amendment) Act 2022 introduces new procedures for how reports must be handled.

### 18.1 ACKNOWLEDGEMENT

#### *A) Reports to the employer*

Reporting channels and procedures can be undertaken by either:

- An internal person or department designated by the ERC
- An external third party authorised by the ERC

The ERC must follow a strict timeline for acknowledging, providing feedback and dealing with the report and must:

- Acknowledge the report within 7 days
- Diligently follow up on the report
- Give the Reporting Person feedback, within 3 months, on actions taken or planned

#### *B) external disclosures to a prescribed or external person*

Clear and easily accessible information on the procedures applicable to the making of reports must be provided by prescribed persons on their websites. For information on the process for external disclosures the worker should refer to these guidance (including the Office of the Protected Disclosures Commissioner).

Generally the prescribed person or external person who receives the protected disclosure must:

- Acknowledge the report within 7 days
- Diligently follow up on the report (including where the report is made anonymously)
- Give the Reporting Person feedback, within 3 months, on actions taken or planned (can be extended to 6 months in certain justified cases)
- Give the Reporting Person information on the final outcome of any investigations

## 19 ASSESSMENT, INVESTIGATION AND OUTCOME

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Upon receipt of any **internal** disclosure in writing that is made under this policy, the recipient shall pass the information to the CEO, who shall assign the report to an impartial Designated Person responsible for the reporting channel and follow up with the Reporting Person.

The Chairperson will be the person notified in circumstances where the Chief Executive is the subject of the disclosure.

The Designated Person shall be responsible for the assessment and investigation of all disclosures in a timely and appropriate manner. The initial report of potential wrongdoing will be acknowledged by the Responsible Person in writing to the Reporting Person within seven days of receipt.

Additional feedback will be provided to the Reporting Person within a reasonable period not exceeding three months from the date of receipt and, if necessary, at three-month intervals thereafter until such time as the procedure relating to the report is closed.

## 19.1 ASSESSMENT

The Designated Person will carry out an initial assessment of the disclosure to determine whether it falls within the scope of this policy and whether it is necessary to carry out an investigation into the disclosure, having regard to the requirements of the Act.

If an investigation is required, the Designated Person shall decide how the matter should be investigated.

The Designated Person will communicate the result of the assessment to the Reporting Person as soon as reasonably practicable confirming whether the matter shall be investigated further and what action has been taken or whether no action is to be taken.

If it is unclear whether the report qualifies as a protected disclosure, the Designated Person will treat the report as a protected disclosure (and protect the identity of the Reporting Person and any persons concerned, in accordance with the procedures) until they are satisfied that the report is not a protected disclosure.

Potential outcomes to the initial assessments may include (list non exhaustive, as the outcome will depend on the case):

- Where the initial assessment shows that there is no evidence that a relevant wrongdoing may have occurred, the matter will be closed.
- Where the relevant wrongdoing is determined to be minor and does not require further follow up, the matter will be closed.
- Some matters may be of such seriousness that the investigation will more appropriately be carried out externally or by professional experts in a particular area. In some cases, the matter may need to be reported to, and investigated by, An Garda Síochána or another body with the statutory power and function of investigation of particular matters.

## 19.2 INVESTIGATION

Where the Designated Person decides that the disclosure falls within this policy and that it must be investigated, the scope and terms of reference of any investigation will be determined prior to the investigation being carried out.

Investigations will be undertaken in accordance with the general principles of natural justice and fair procedures and any other relevant procedures of the ERC as appropriate.

Responsibility for investigating and addressing allegations of wrongdoing lies with the ERC and not the Reporting Person. Reporting Persons should not attempt to investigate wrongdoing themselves.

The Designated Person may appoint persons from within the organisation. It may also, at its discretion, appoint an external third party to investigate the matter, especially in circumstances where the third party has relevant and necessary specialised knowledge of the subject matter.

The person carrying out the investigation will not have been previously involved at the assessment stage.

In the course of the investigation the Reporting Person may be required to attend meetings with the investigator in order to provide further information. The investigator will draft a report on their investigation.

The investigator's report will be sent to the CEO who will determine if any action should be taken by the ERC.

Such action could include changes to the way the ERC conducts its operations, disciplinary action (following the application of the appropriate disciplinary procedure), referral of the matter for consideration under a specific ERC policy or procedure, or a report to an appropriate third party, such as An Garda Síochána.

## **Feedback**

The Designated Person will endeavour to keep the Reporting Person who made the disclosure informed of the progress of the investigation and its likely timescale.

However, sometimes the need for confidentiality or to facilitate a fair and comprehensive investigation may prevent the Designated Person giving specific details of the investigation.

The Reporting Person should treat any information about the investigation as confidential.

If the Designated Person concludes that the Reporting Person has made false allegations deliberately, maliciously or with a view to personal gain, they may be subject to disciplinary action in accordance with the ERC's disciplinary policies and procedures.

In the case of a disclosure where it is determined by the CEO that there is no case to answer, a summary of the disclosure shall be reported to the Board of the ERC.

Following any investigation and subsequent decision made by the CEO, a written report shall be submitted by the CEO to the Board of the ERC containing the following information:

- a) a description of the disclosure and the findings of the investigation;
- b) the effect the disclosure had on the ERC, if any;

- c) the means of perpetrating the malpractice or impropriety;
- d) the measures taken to prevent a recurrence;
- e) the action required to strengthen future responses under this policy;
- f) a conclusion as to the way forward;
- g) whether any report has been made or is required to be made to any third party; &
- h) any other relevant material.

The Designated Person will communicate in writing to the Reporting Person the final outcome of the investigation.

### **Referral under the Anti-Fraud Policy**

The Designated Person shall also determine whether the disclosure should be the subject of a referral under the ERC's Anti-Fraud Policy and/or be notified to the following:

- the person who is the subject of the disclosure;
- the ERC's insurers;
- An Garda Síochána;
- any third party aligned with the ERC affected by the disclosure;
- the Department of Education;
- any other relevant authority.

## 20 SYSTEM OF REVIEW

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A review may be sought:

- By the Reporting Person into a decision, following assessment, to close the procedure or refer the matter to another process.
- By any affected party in respect of the conduct or outcome of any follow-up actions (including any investigation) taken on foot of the receipt of a report;
- By any affected party in respect of the conduct or outcome of any investigation into a complaint of penalisation; and
- Except in exceptional cases, by any party affected by any decision to disclose the identity of the Reporting Person to persons other than those authorised under these procedures to handle reports.

A request for a review can be made to the ERC's Head of Corporate Services, in the first instance. If this is not deemed appropriate, the request for a review can then be made to the ERC's Head of Research or the HR Manager.

## 21 SUPPORT AND INFORMATION

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You can get information on your rights and entitlements under employment legislation from the [Workplace Relations Commission](#).

Transparency International Ireland operates a free Speak-Up Helpline that offers support and referral advice (which may include referral to legal advice) for workers who have reported or plan to report wrongdoing. 'Speak Up' helpline can be contacted at 1800 844 866, Monday to Friday, 10am to 6pm, email [helpline@transparency.ie](mailto:helpline@transparency.ie) or visit [speakup.ie](http://speakup.ie).

For workers who are members of a trade union, many unions offer free legal advice services on employment-related matters, including protected disclosures.

Further information regarding the Act is available from [Citizens Information](#).

You can submit a report to the Office of the Protected Disclosures Commissioner by:

- Email to [info@opdc.ie](mailto:info@opdc.ie)
- Post to Office of the Protected Disclosures Commissioner 6 Earlsfort Terrace, Dublin 2, D02W773
- Phone at 01 639 5650

You can read [gov.ie - Protected Disclosures Act: Information for Citizens and Public Bodies](#) and the [Protected Disclosures Commissioners FAQs](#) for more information.

## 22 POLICY REVIEW AND RESPONSIBILITY

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Overall responsibility for this policy and procedures lies with the CEO of the ERC.

This policy and procedures will be reviewed at least at least once every three years, or sooner if required to ensure that they are in line with changes in law and/or public sector guidance.