

Protected Disclosures Policy

2024

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1 INTRODUCTION

The Protected Disclosures Act 2014 (as amended) (the “Act”) provides a framework to protect workers who wish to report information about certain wrongdoing. Workers include current and former: employees, contractors, agency workers, trainees, shareholders, board members, members of the administrative, management or supervisory body of an undertaking, volunteers, job candidates and contractors involved in pre-contractual negotiations. Public bodies are required to establish, maintain, and operate internal reporting channels and procedures for the making of reports and for conducting follow-up to reports.

The Board and Chief Executive Officer of Enterprise Ireland (“EI”) are committed to maintaining the highest standards of honesty, openness, and accountability. They recognise that workers have an important role to play in achieving this goal and that workers who witness improper activity and practices may feel apprehensive about reporting their concerns. This may be because they feel that speaking up would be disloyal to their colleagues, or because they do not think that their concerns will be taken seriously, or it may be because they have concerns that they may suffer adverse consequences if they speak up.

The purpose of this Policy is to ensure that processes are in place to allow reports to be made safely, and to ensure that all reports of relevant wrongdoings are confidentially assessed, and appropriate action is taken.

2 SCOPE OF THE POLICY

This Policy applies to disclosures made by “workers” as defined in Section 3 of the Act. This includes current employees, past employees, contractors (including contractors involved in pre-contractual negotiations), agency workers, trainees, those on work experience pursuant to a training course or programme, volunteers, board members, shareholders, job candidates and members of the administrative, management or supervisory body of an organisation.

3 WHAT IS A PROTECTED DISCLOSURE?

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

A “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.

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 employee’s contract of employment or other contract whereby the employee 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 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 does not matter whether a relevant wrongdoing occurred, occurs, or would occur in the State or elsewhere and whether the law applying to it is that of the State or that of any other country or territory.

Matters that are not relevant wrongdoings include:

- Failure to comply with a legal obligation that arises solely under the worker’s contract of employment or other contract where the worker undertakes to do or perform personally any work or services is not a relevant wrongdoing.
- A matter is not a relevant wrongdoing which 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.
- A matter concerning interpersonal grievances exclusively affecting a reporting person, namely, grievances about interpersonal conflicts between the reporting person and another worker, or a matter concerning a complaint by a reporting person to, or about, his or her employer which concerns the worker exclusively, shall not be a relevant wrongdoing for the purposes of that Act. Purely interpersonal grievances as defined may be more appropriately addressed under the Grievance Procedure, or other applicable procedure to which the reporting person has access.

It is important to note that:

- The protected disclosure procedures are not intended to act as a substitute for normal day-to-day operational reporting or other internal employment procedures. For example, a worker may complain that there is a dispute exclusively between the worker and a manager concerning their duties, and this type of complaint should generally be dealt with under the grievance procedure. The protected disclosure process deals with reports about relevant wrongdoings.
- It does not matter whether a relevant wrongdoing occurred, occurs, or would occur in the State or elsewhere and whether the law applying to it is that of the State or that of any other country or territory.

A “reporting person” under the Act is a worker who makes a report in accordance with the Act, and who discloses relevant information that in their reasonable belief tends to show a relevant wrongdoing and the information came to the worker in a work-related context.

A “person concerned” under the Act means a natural or legal person who is referred to in a report as a person to whom the relevant wrongdoing is attributed or with whom that person is

associated.

EI encourages workers to report concerns rather than to keep them to themselves. Once a worker has a reasonable belief that the information they have tends to show wrongdoing and their report meets the definition of a protected disclosure, even if they were mistaken, the worker will still be protected. Reports about potential wrongdoings are valued and appreciated.

4 ROLES AND RESPONSIBILITIES

4.1 GENERAL ROLES AND RESPONSIBILITIES

All workers should feel confident and safe in raising concerns about relevant wrongdoings via the channels outlined in this Policy. These channels are easily accessible and designed and operated in a secure manner.

4.2 SPECIFIC ROLES

4.2.1 Manager of Corporate Governance

The Manager of Corporate Governance is the owner of this Policy and is therefore responsible for ensuring the administration, revision, interpretation, and application of this Policy.

The Manager of Corporate Governance is responsible for promoting an awareness of this Policy and the provision of relevant training relating to the processes outlined in the Policy, including investigator training.

4.2.2 Designated Person

In line with the: Protected Disclosures Act Interim Guidance for Public Bodies and Prescribed Persons published by the Department of Public Expenditure and Reform, and the: Protected Disclosures Act Statutory Guidance for Public Bodies and Prescribed Persons November 2023, published by the Department of Public Expenditure NDP Delivery and Reform, the Designated Person role should be assigned to a person in the area of corporate governance and compliance. Enterprise Ireland's Designated Person is the Secretary to the Enterprise Ireland Board, contact details are as follows:

Designated Person: Paula Maguire.

The Designated Person can be contacted via:

- 1. Dedicated Email: protecteddisclosures@enterprise-ireland.com**
- 2. Dedicated Phone: 087 117 8105**
- 3. Postal address via envelope clearly marked “Private and Confidential” addressed to “The Designated Person at Enterprise Ireland, The Plaza, East Point Business Park, Dublin 3.**

The Designated Person is responsible for the handling of reports, including undertaking an assessment of the report, communicating the outcome of the assessment to the reporting person, and where there is *prima facie* substance to a reported concern, taking appropriate action which may include undertaking an investigation. The Designated Person may, subject to legal restrictions and obligations, engage the services of an independent adviser (utilising existing frameworks where appropriate), HR and other internal departments where required.

The Board of Enterprise Ireland, subject to any legal restrictions that apply, including legal restrictions concerning protection of identity or any other legal restriction or legal obligations, requires that the Designated Person shall:

- Report the receipt of a report to the Chief Executive Officer and Audit, Finance and Risk Committee.
- Report the outcomes of all preliminary assessments to the Chief Executive Officer, the Audit, Finance and Risk Committee and the Board.
- Report the outcomes of all investigations to the Chief Executive Officer, the Audit, Finance and Risk Committee and the Board.
- Report the outcome of any appropriate action taken by the Designated Person to the Audit, Finance and Risk Committee and Board.
- Report complaints about the operation of the procedures to the Audit, Finance and Risk Committee.

4.2.3 Our People

Line managers should ensure that their team members are made aware of the processes set out in this Policy.

Where a report is received by a Line Manager, or others within Enterprise Ireland, the requirements set out below must be strictly adhered to, and the report forwarded promptly

without modification to the Designated Person whose contact details are at 4.2.2 above.

Such reports and all information received must be kept confidential. Those who receive reports must transmit them without modification to the Designated Person and must not disclose to others any information about the report, particularly information that might directly or indirectly identify the reporting person, or any person concerned. Breach of these confidentiality requirements may result in disciplinary action.

Unless a specific limited exception applies, there is a legal obligation on the recipient of a disclosure and any person to whom a disclosure is referred, not to disclose to another person, the discloser's identity, or any information from which the identity of the discloser may be directly or indirectly revealed. A reporting person has a right to take legal action against a person who fails to comply with the obligations to protect their identity. A breach of the legal obligations surrounding protection of identity is a criminal offence. See section 5 for more information on protection of identity.

4.2.4 Audit, Finance and Risk Committee and the Board of Directors

The Board and the Audit, Finance and Risk Committee are responsible for:

- Reviewing this Policy, at least annually, to ensure that it continues to provide an appropriate response to addressing and dealing with Protected Disclosures within Enterprise Ireland.
- Subject to legal restrictions reviewing the investigation outcome report issued by the Designated Person.
- Subject to legal restrictions reviewing the outcome of any appropriate action taken by the Designated Person to the Audit, Finance and Risk Committee and Board
- Ensuring adequate resources are allocated and assigned to operate the Protected Disclosures Procedures effectively.
- Ensuring that the Protected Disclosures Procedures are integrated into Enterprise Ireland's business processes (including financial management, risk management, procurement, audit, HR, IT, etc.).

The Audit, Finance and Risk Committee is specifically responsible for:

- Monitoring the operations of the procedures within this Policy on an ongoing basis through:
 - Updates from the Designated Person on the number of reports, the number of investigations being undertaken, the number of other “appropriate actions” undertaken and the status of any investigations or other appropriate actions; and
 - An annual audit on procedures undertaken by the agency’s internal auditors. The audit should be completed prior to the annual review of this Policy.
- Reporting to the Board on an annual basis on the operations of the procedures within this Policy.

4.2.5 Executive Committee

The Executive Committee is responsible for reviewing this Policy to ensure that it continues to provide a robust framework for the response to Protected Disclosures within Enterprise Ireland.

4.2.6 Internal Auditor

The Internal Auditor is responsible for undertaking an annual audit on the operation of the procedures within this policy for presentation to the Audit, Finance and Risk Committee.

4.2.7 Appeals Officer

The Appeals Officer will be appointed by the Designated Person. The Appeals Officer will be a person who was not involved in the original process under review and will be of at least equivalent or more senior level of seniority to the person who had carried out the original process.

4.2.8 Breach of confidentiality contact

The reporting person should contact the Designated Person if he or she wishes to make a complaint concerning a breach of identity or penalisation.

Where an individual wishes to report a data breach the Data Protection Officer should be contacted. Enterprise Ireland’s Data Protection Officer is Shirley Murray, and she can be contacted at: shirley.murray@enterprise-ireland.com

4.2.9 Management of the Mailbox for receiving Reports

The management of the mailbox for receiving reports will be undertaken by the Designated Person.

5 MAKING A REPORT

5.1 CONFIDENTIALITY

Our channels for receiving reports are designed, established, and operated in a secure manner that ensures that the confidentiality of the identity of the reporting person and any third party mentioned in the report are protected. Access to the channels is restricted to the Designated Persons. A report can be made to the reporting channels via the contact details provided at 4.2.2 above.

The reporting person's identity or any information from which it may be deduced, cannot be disclosed without the reporting person's express consent, unless permitted by one of the exceptions in Section 16 of the Act detailed below:

1. Section 16 (1) permits a person to whom a report is made or transmitted, to disclose the identity of the reporting person or information from which the identity of the reporting person may be directly or indirectly deduced, to such persons (including designated persons) as the recipient of the report reasonably considers may be necessary for the purposes of the receipt or transmission of, or follow-up on, reports as required under the Act.
2. Section 16 (2) provides that the section 16 obligations in relation to protection of identity do not apply in the following cases:
 - (a) where the disclosure is a necessary and proportionate obligation imposed by Union 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.
 - (b) where the person to whom the report was made or transmitted—
 - (i) shows that he or she took all reasonable steps to avoid disclosing the identity of the reporting person or any information from which the identity of the reporting person may be directly or indirectly deduced, or
 - (ii) reasonably believes that disclosing the identity of the reporting person or

any identifying information is necessary for the prevention of serious risk to the security of the State, public health, public safety, or the environment.

(c) where the disclosure is otherwise required by law.

If an exception applies, then the express consent of the reporting person is not required.

In the case of (a) or (b)(ii) above, where it is decided that it is necessary to disclose the identity of the reporting person or other information that may or will identify the reporting person, the reporting person will be informed in advance of this decision with reasons, unless notification would jeopardise the:

- I. effective investigation of the wrongdoing.
- II. prevention of serious risk to the security of the State, public health, public safety, or the environment; or
- III. prevention of crime or prosecution of a criminal offence.

A reporting person may, unless exceptional circumstances apply, request a review of a decision to disclose their identity under the System of Review process which is set out at 5.9 in this Policy.

A reporting person has a right of action in tort against a person who fails to protect their identity. A breach of section 16 may also result in criminal sanction.

A reporting person can make a complaint, if their identity has been disclosed, and how to do this is set out at 4.2.8 above.

Other employees must not attempt to identify a reporting person, or a person concerned. The identity of persons concerned must be protected if a report is transmitted by the Protected Disclosures Commissioner to Enterprise Ireland as a suitable other person for the receipt of a particular report. The disciplinary process may be invoked against an employee who attempts to identify a reporting person, or a person concerned.

In accordance with the Act, Enterprise Ireland must submit specific information on reports in respect of the preceding calendar year calendar year, to the Minister for Department of Public

Expenditure, NDP Delivery and Reform and must also prepare and publish an annual report containing this information. This information must be prepared in a form which does not enable the identification of the reporting person or persons concerned. Further information on this reporting requirement is set out under heading 9 below.

5.2 PROCEDURE FOR Making a Report

If a worker wishes to report their concerns in relation to a wrongdoing, the following process should be followed:

1. A report of the concern may be submitted as follows: in writing via the dedicated postal address, by email to the dedicated email address, via the dedicated telephone number, or were requested via personal visit to the Designated Person. The contact details for each of these disclosure avenues are set out at 4.2.2 above. A record of every report will be made. In the case of verbal disclosures, a written record will be kept of the disclosure with due regard to confidentiality obligations. Where the reporting person makes a report to the Designated Person and discloses their identity the Designated Person will give the reporting person an opportunity to check, rectify and agree the record of the report.
2. The Designated Person will acknowledge receipt of a report within 7 days. The acknowledgement will include:
 - A copy of these procedures.
 - Further information about the protected disclosures process explaining to the reporting person what will happen and when.
 - Information on the protection of the identity and the protection from penalisation.
 - Information in relation to feedback and what type of feedback will and will not be given.
 - Information that the discloser may in writing request further feedback at 3 month intervals.

5.3 PROCEDURE FOR ASSESSMENT OF REPORT BY THE DESIGNATED PERSON

1. The Designated Person will carry out an initial assessment of the report and may seek further information from the reporting person if required.
2. The Designated Person will assess whether or not there is *prima facie* evidence that a relevant wrongdoing may have occurred. If, on initial assessment by the Designated Person, the Designated Person decides that there is no *prima facie* evidence that a relevant wrongdoing may have occurred, the protected disclosures procedure will be closed and the matter may be referred to another agreed procedure, and the discloser will be informed in writing of this decision and the reasons for it. If the initial assessment finds that there is *prima facie* substance to a reported concern, the Designated Person will take appropriate action to address the alleged relevant wrongdoing having regard to the nature and seriousness of the matter concerned.
3. The reporting person may request a review of the assessment decision under our review process which is set out further below.
4. Ongoing risk assessment and monitoring of reporting persons: In consultation with the reporting person a risk assessment of the potential exposure of the reporting person to penalisation will be undertaken at the time of assessment of the report. This assessment will also consider any potential risks specifically identified by the reporting person and any suggestions or requests the reporting person might have to assist in their protection. Plans or contingencies for dealing with penalisation should be discussed with the reporting person. The risk assessment should be reviewed at periodic intervals and updated where required. Monitoring for the emergence of risk factors should continue following the completion of follow-up and the closure of the report.

The Designated Person will provide feedback to the reporting person within 3 months of the acknowledgement of the report. Where the reporting person makes a request for further feedback in writing, further feedback will be given at 3 monthly intervals until such time as the procedure relating to the report is closed.

The conditions surrounding the communication of the final outcome of any investigation are contained under the “Feedback” heading at 5.7 below.

5.4 INVESTIGATING RESPONSIBILITIES

If the assessment carried out by the Designated Person finds that there is *prima facie* substance to a reported concern, appropriate action will be undertaken which may include an investigation. The Designated Person has primary responsibility for the appropriate action and any investigation into a disclosure. Additionally, the services of an external independent investigator/adviser may be engaged. Subject to legal restrictions Human Resources and other relevant internal departments may be involved in the investigation where required.

All allegations will be dealt with as promptly as possible, and every effort will be made to complete the investigation within a reasonable timeframe.

5.5 INVESTIGATION PROCESS

1. Following the initial assessment, the Designated Person will decide whether or not an investigation is needed, and whether or not any investigation should be conducted via a formal process or an informal process, depending on the nature and seriousness of the circumstances. The Designated Person has primary responsibility for the investigation of all allegations and will coordinate such investigations. The Designated Person will ensure that individuals charged with investigating are suitably qualified personnel, either internal or external.
2. Subject to 3 below, in order to comply with the obligation to protect the identity of the reporting person under the Act, it is generally unlikely to be permissible for the identity of the reporting person to be disclosed to an individual concerned in relation to the wrongdoing. The provisions of the amended Act reduce the circumstances in which the duty to protect the identity of the reporting person does not apply.
3. An investigation process that goes beyond merely an information gathering exercise, and which may result in an adverse finding against any individual(s), will require the application of the general principles of natural justice and fair procedures, as appropriate.
4. To the fullest extent practicable, the investigation will be carried out in a confidential manner. Relevant witnesses will be interviewed, and a record of all meetings will be kept.

5.6 SUSPENSION TO FACILITATE INVESTIGATION

In appropriate circumstances, a person against whom an allegation is made may be suspended, on full pay, in order to facilitate a thorough investigation. Suspension of this nature is not considered a disciplinary action or a presumption of inappropriate behavior.

5.7 FEEDBACK

- If a reporting person requires further feedback at 3 month intervals, the reporting person can request this in writing. On receipt of a written request, further feedback shall be provided at 3 month intervals until the process is completed.
- The Designated Person may choose to provide further feedback even if not requested. The interval for such further feedback will not be greater than 3 months.
- Any feedback given is provided in confidence and should not be disclosed by the reporting person other than to their legal advisor or trade union representative or by way of further protected disclosure.
- Feedback will include information on the action envisaged or taken as follow-up to the report and also the reasons for such follow-up.
- Feedback will exclude any information that could prejudice the outcome of an investigation or any other action that might follow.
- Feedback will not include any information on any disciplinary process involving another worker. Such information is confidential between the employer and the employee concerned.
- If an investigation determines that no relevant wrongdoing has occurred, the reporting person will be informed of this.
- If no further action is required to be taken, the reporting person will be advised of this.
- The final outcome of an investigation triggered by the report will be communicated to the reporting person as a matter of good practice. The final outcome will only be provided subject to legal restrictions concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation. The communication of the final outcome does not require the provision of the full investigation report.

5.8 INVESTIAGTION OUTCOMES

5.8.1 If an internal investigation concludes that misconduct has occurred

Subject to legal restrictions, the reporting person will be informed of the general outcome of the investigation in accordance with 5.7 above. Any disciplinary process instigated by EI is confidential between the worker and EI and no information relating to any disciplinary process will be communicated in the final outcome.

Where the final outcome report finds that a misconduct has occurred the matter may:

- Be considered under the appropriate stage of Enterprise Ireland's Disciplinary Procedures; and/or
- Where appropriate be referred to an outside body including the Garda Síochána.

Please note where the outcome of an investigation concludes that there is cause to invoke the disciplinary policy, in some cases, the disciplinary process will be temporarily suspended pending the outcome of a Garda investigation. Thereafter the disciplinary process relating to those findings will resume.

5.8.2 If an internal investigation reveals that misconduct has not occurred

The reporting person and the person against whom the allegation has been made will be notified by the Designated Person that a thorough investigation has been conducted and, subject to legal restrictions, of the outcome of that investigation.

5.9 SYSTEM OF REVIEW

The following persons can request a review of the following decisions:

- A decision, following assessment, to close the procedure or refer the matter to another procedure, if requested by the reporting person.
- The conduct or outcome of any follow-up actions (including any investigation) taken on foot of the receipt of a report, if requested by any affected party.
- The conduct or outcome of any investigation into a complaint of penalisation if requested by any affected party.

- Any decision to disclose the identity of a reporting person (except in exceptional cases) if requested by the reporting person.

A request for a review must:

- Be made to the appointed Appeals Officer within 10 working days of the issue the subject of the review arising.
- A request for review must set out the reasons for the request.

The Review:

- May, at Enterprise Ireland's discretion, be carried out externally.
- Will be carried out by a person who was not involved in the original process under review, and this person will be of at least equivalent or more senior level of seniority to the person who had carried out the original process.

The reviewer will not re-investigate the matter in question. The reviewer will address the specific issues the applicant feels have received insufficient consideration. This will include:

- Whether the correct procedures were followed.
- In the case of an investigation, whether the terms of reference were adhered to.
- Whether the conclusions/findings could or could not reasonably be drawn from the information/evidence on the balance of probability.
- Where a review finds significant shortcomings or failings in the process, we will then consider what further action(s) may or may not need to be taken in response to the findings.
- The outcome of the review is final and there will be no entitlement to further reviews of the same issue.

5.10 Penalisation and PROTECTIONS

5.10.1 Penalisation

Enterprise Ireland assures workers who make reports about wrongdoing that their concerns will

be treated seriously and sensitively. Enterprise Ireland will provide all necessary support and will protect workers from penalisation or any threat of penalisation for having made a protected disclosure.

Penalisation or the threat of penalisation of any kind against an employee for making a protected disclosure is a disciplinary issue and will give rise to corrective action under the Disciplinary Procedure.

Penalisation means any direct or indirect act or omission which occurs in a work-related context, which is prompted by the making of a report and causes or may cause unjustified detriment to a worker. While the following is not an exhaustive list, penalisation includes:

- a) Suspension, lay-off or dismissal.
- b) Demotion or 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, or harassment.
- f) Discrimination, disadvantage, or unfair treatment.
- g) Injury, damage, or loss; and
- 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.

5.10.2 Protections

The following protections are available to workers making a Protected Disclosure:

- a) The identity of the discloser must be protected subject to the exceptions provided for in the Act.
 - b) The confidentiality of the disclosure must be maintained in accordance with the Act.
 - c) A discloser who makes an anonymous report and who is subsequently identified and penalised is entitled to protections under the Act.
 - d) A discloser may not be subjected to penalisation or dismissal for making a protected disclosure. A discloser may seek redress at the Workplace Relations Commission for penalisation or unfair dismissal wholly or mainly for having made a protected disclosure. The burden of proof is on the employer to show that the act or omission was based on duly justified grounds. Such claims must normally be taken within 6 months.
 - e) A discloser may seek "interim relief" from the Circuit Court in respect of a claim for penalisation or unfair dismissal wholly or mainly for having made a protected disclosure. Applications must normally be taken within 21 days of the dismissal or last act of penalisation.
 - f) A discloser has immunity from civil liability save for in defamation cases. There is a defense of qualified privilege available in defamation law.
 - g) Workers, employees and third parties have a cause of action in tort against a person who
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causes detriment to them because they, or another person, have made a protected disclosure. The burden of proof is on the person being sued to show that the act or omission concerned was based on duly justified grounds.

- h) It is a criminal offence to penalise or threaten to penalise a reporting person, or to cause or permit any other person to penalise or threaten to penalise a reporting person or any of the following persons: a facilitator; any third person connected with a reporting person and who could suffer retaliation in a work-related context, including a colleague or relative of the reporting person; any legal entity that a reporting person owns, works for or is otherwise connected with in a work-related context.
- i) It is also a criminal offence to bring vexatious proceedings against any of those referenced in (h) above.
- j) In a prosecution for any offence prohibiting or restricting the disclosure of information, it is a defense to show that, at the time of the alleged offence, the disclosure was, or was reasonably believed to be, a protected disclosure.
- k) The Act sets down rules about record keeping. Data access rights are restricted in respect of information that relates to protected disclosures. The Freedom of Information Act is also amended to prevent access to a record relating to a protected disclosure. See section 7 below.

Any action by a manager or other employees to deter an employee from raising valid concerns about a possible wrongdoing may result in disciplinary actions in line with the Disciplinary Procedures. Such action may also result in criminal sanction as referred to above.

5.11 DISCIPLINARY RECORD AND CONDUCT OF DISCLOSER

The focus of these procedures will be the alleged wrongdoing and protecting the reporting person. The reporting person's disciplinary record is irrelevant.

In general, where a disclosure is made during an investigation, disciplinary or other HR process, this should not affect those distinct processes. However, an exception may arise where the worker can demonstrate that the investigation, disciplinary or other action is a form of penalisation for making a

protected disclosure.

Where a worker has made a disclosure, 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. The worker is not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. Normal management of a worker who has made a report, does not constitute penalisation, and normal management can include the taking of disciplinary action against the worker for matters unrelated to a the making of a disclosure.

5.12 False Reports

Where the reporting person knowingly reports false information, any person harmed as a result has a right of action in tort against the reporting person.

A reporting person who makes a report containing any information that he or she knows to be false commits an offence.

The disciplinary process will be invoked against a worker who knowingly reports false information.

Where an allegation is not upheld by a formal investigation it is important to note that once the requirements of the Act are satisfied the discloser will still be protected. The discloser must have a reasonable belief that the information disclosed tends to show wrongdoing. The term 'reasonable belief' does not mean that the belief has to be correct. There may be reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the belief was mistaken. A discloser cannot be penalised simply for getting it wrong. However, a disclosure made in the absence of a reasonable belief will not attract the protection of the Act and may result in disciplinary action against the discloser.

5.13 WHERE TO GET ADVICE OR SUPPORT

Enterprise Ireland has an Employee Assistance Programme (EAP) in place which provides a confidential, independent, and impartial source of support. Enterprise Ireland does not receive any personal identifying information on persons accessing this support. The EAP can be accessed [here](#).

Advice and support may also be available from workers' trade unions as well as Citizens Information.

[Transparency Legal Advice Centre](#) provides free legal advice to persons wishing to speak up about wrongdoing. The service can be accessed by calling the Speak Up Helpline 1800 844 866.

6 PROCEDURE FOR MAKING AN ANONYMOUS DISCLOSURE

6.1 ANONYMOUS ALLEGATIONS

A concern may be raised anonymously. However, on a practical level it may be difficult to investigate such a concern. To facilitate appropriate follow-up, we encourage workers to put their names to allegations, with our assurance of confidentiality. This will make it easier for us to assess the disclosure and take appropriate action including an investigation if necessary.

Unless prohibited by any other enactment, anonymous reports will be acted upon to the extent that is possible. Such reports will be assessed, and where an initial assessment confirms that there is *prima facie* evidence that a relevant wrongdoing may have occurred, follow-up action will be taken to the extent that is possible from the information provided.

If a reporting person chooses to remain anonymous, it may not be possible to apply elements of the Procedures such as maintaining communication and providing feedback or protecting the reporting person from penalisation.

An anonymous discloser who has made a protected disclosure and who is subsequently identified and penalised is protected by the Act. If redress is sought, the reporting person cannot obtain redress without identifying themselves as part of the process.

A record will be made of all anonymous reports.

6.2 PROCEDURE FOR MAKING AN ANONYMOUS REPORT

If a worker wishes to make an anonymous report, the worker can do so by using any of the channels set out at 5.2(1) above. A record of every report will be made.

7 PRODEDURE FOR MAKING AN EXTERNAL REPORT

7.1 EXTERNAL DISCLOSURES

The Act provides for various channels via which workers can disclose externally if they wish; there are conditions related to each channel that must be met if a report made via an external channel is to be protected under the Act. The “external” disclosure options are as follows:

1. External Reporting to Another Responsible Person:

Where the worker reasonably believes that the relevant wrongdoing which the disclosure tends to show relates solely or mainly—

- (i) to the conduct of a person other than the worker’s employer, or
- (ii) to something for which a person other than the worker’s employer has legal responsibility, a report may be made to that other person.

The report must be of relevant information which in the reasonable belief of the worker tends to show a relevant wrongdoing, and the information must have come to the worker in a work-related context.

2. External Reporting to a Prescribed Person:

Certain persons have been prescribed to be recipients of disclosures about relevant wrongdoings that relate to specific areas for which they have responsibility. Who these prescribed persons are, and the specific matters that can be reported to them, are set out in a list of prescribed persons which can be found at: [gov.ie - Protected Disclosures \(Whistleblowing\): List of prescribed persons \(www.gov.ie\)](http://www.gov.ie)

Each prescribed person has on their website the method for making a report to them.

For a report to a prescribed person to qualify as a protected disclosure, there are two further conditions to be met. The general conditions already set out in this Procedure must be met (i.e., the report must be of relevant information, that tends to show, in the reasonable belief of the worker, one or more relevant wrongdoings, and the information must have come to the worker in a work-related context), along with the two following additional conditions:

- The worker must reasonably believe that the relevant wrongdoing falls within the description of the specific matters in respect of which the person is prescribed, **and**
- The worker must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true.

If all the above conditions are not met, the report will not amount to a protected disclosure and the reporting person will not gain the protections of the Act.

For information, the following Officers of Agencies and Offices of the Department are amongst those listed as prescribed persons:

- Chairperson & Members of the Competition and Consumer Protection Commission
- Director Corporate Enforcement Authority
- Chief Executive of the Health and Safety Authority
- Chief Executive of the Irish Auditing and Accounting Supervisory Authority
- Chief Executive of the National Standards Authority of Ireland
- Controller of the Intellectual Property Office of Ireland
- Director of Workplace Relations Commission

3. External Reporting to the Protected Disclosures Commissioner:

A report can also be made to the Office of the Protected Disclosures Commissioner (“the Commissioner”).

For such a report to qualify as a protected disclosure, the general conditions already set out in this Procedure must be met (i.e., the report must be of relevant information, that tends to show, in the reasonable belief of the worker, one or more relevant wrongdoings, and the information must have come to the worker in a work-related context), along with the following additional condition:

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

If all the above conditions are not met, the report will not amount to a protected disclosure and the reporting person will not gain the protections of the Act.

Information on how to report to the Commissioner can be found on the website of the Protected

Disclosures Commissioner here: [Information for Whistleblowers](#)

4. External Reporting to a Relevant Minister:

A worker may make a disclosure to a relevant Minister if the worker is or was employed by a public body and if one or more of the following conditions are met:

- the worker has previously made a report of substantially the same information, to their employer, to a prescribed person, to the Protected Disclosures Commissioner, or to a relevant Minister, but no feedback has been provided to the worker in response to the report within the specified feedback period, or, where feedback has been provided, the worker reasonably believes that there has been no follow-up or that there has been inadequate follow-up.
- the worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing concerned.
- the worker reasonably believes that the relevant wrongdoing concerned 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.

The Minister for Enterprise, Trade and Employment is the relevant Minister for Enterprise Ireland. Disclosures can be made to Ministerprotecteddisclosure@enterprise.gov.ie. The Minister may designate a relevant person to monitor this mailbox. The Head of Management and Business Support Unit and the AP in Management Support Unit are the relevant persons who monitor the mailbox in the Department.

If a report is made to the Minister, it will, within 10 days of receipt, be transmitted without the Minister's consideration directly to the Protected Disclosures Commissioner. The Minister will not act on the contents of the disclosure or engage in correspondence with the reporting person. Any further queries or correspondence from the reporting person following transmission should be referred to the Commissioner.

5. External S.10 Reports

There are specific legal requirements that must be met for a reporting person to be protected if they make a disclosure to any person other than an employer, another legally responsible person, a

prescribed person, a relevant Minister, or the Protected Disclosures Commissioner:

- The worker must reasonably believe that the information disclosed in the report, and any allegation contained in it, are substantially true, as well as satisfy at least one of the specific conditions set out below:
- The worker previously made a disclosure of substantially the same information to their employer, to a prescribed person, to the Protected Disclosures Commissioner, or to a relevant Minister, but no appropriate action was taken in response to the report within the specified feedback period, or
- The worker reasonably believes that the relevant wrongdoing concerned 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, or
- The worker reasonably believes that if he or she were to make a report to a prescribed person, the Protected Disclosures Commissioner, or a relevant Minister that there is a risk of penalisation, or
- The worker reasonably believes that if he or she were to make a report to a prescribed person, the Protected Disclosures Commissioner or a relevant Minister that there is a low prospect of the relevant wrongdoing being effectively addressed, due to the particular circumstances of the case, such as those where evidence may be concealed or destroyed or where a prescribed person may be in collusion with the perpetrator of the wrongdoing or involved in the wrongdoing.

6. External Reporting to EU institutions, bodies, offices, or agencies:

A reporting person may make a report of breaches of certain EU law. A breach means, an act or omission that is unlawful, which falls within the scope of certain European Union Acts set out in the [Annex](#) in Schedule 6 of the Act; or which affects the financial interests of the Union as referred to in the Treaty of the Functioning of the European Union (“the Treaty”); or which relates to the internal market as referred to in the Treaty, including breaches on Union competition and State aid rules, breaches relating to the internal market and rules of corporate tax or arrangements to obtain a tax advantage which defeats the object or purpose of the applicable corporate tax law; or an act or omission that defeats the object or purpose of the rules in the Union acts set out in the Annex to the Act.

Under section 7B of the Act a worker may make a disclosure of such a breach to a relevant institution, body, office, or agency of the European Union if the worker has reasonable grounds to believe that the information on breaches reported was true at the time of reporting and that such information fell within the scope of Directive 2019/1937 on the protection of persons who report breaches of Union law. This Directive is transposed into Irish law by the Protected Disclosures Act 2014.

8 DATA PROTECTION/FREEDOM OF INFORMATION

The general principles governing the collection of data under GDPR apply, however the Act imposes certain restrictions on data subject rights.

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 Freedom of Information Act does not apply to a record relating to any protected disclosure, irrespective of when it was made.

9 ANNUAL REPORT

By 1st March in a given year, in accordance with the Act, Enterprise Ireland must provide an annual report to the Minister for Department of Public Expenditure, NDP Delivery and Reform. This must include

the information set out further below, in respect of the preceding calendar year. The information must be provided in such a way that it does not enable the identification of reporting persons or persons concerned.

By 31st March in a given year, Enterprise Ireland must also publish on their website and in any other format that may be appropriate, a report each year in respect of the previous calendar year. This report must contain the information provided to the Minister, and a statement confirming that Enterprise Ireland, has in place either, or both, internal reporting channels and procedures, and external reporting channels and procedures as required. Where Enterprise Ireland publishes a report of its activities in respect of any calendar year, this information may be included in that report.

The information to be provided relates to the matters below:

- a) the number of reports made to Enterprise Ireland.
- b) the number of reports transmitted to Enterprise Ireland.
- c) in respect of each report, whether the relevant wrongdoing was a breach.
- d) the number of investigations and proceedings opened by Enterprise Ireland in relation to the relevant wrongdoings as a result of the reports.
- e) the number of investigations and proceedings that remain open from preceding years.
- f) the number of investigations and proceedings that were closed.
- g) in respect of investigations and proceedings that were closed, the outcome and the decision taken by Enterprise Ireland.
- h) where relevant and in so far as it can be ascertained the estimated financial damage and the amounts recovered following any investigation and proceedings.
- i) such other information relating to the performance and functions of Enterprise Ireland as may be requested by the Minister.

10 RECORD KEEPING

A record of every report made must be kept, including anonymous reports.

If a recorded telephone line or voice messaging system is used, a recording or complete and accurate transcript of the conversation may be kept, with the consent of the reporting person.

If the call is not recorded, minutes of the call may be made, and where the reporting person has disclosed their identity, they must be offered the opportunity to check, verify and agree the minutes or transcript by signing them.

If a meeting in person with the Designated Person takes place at the request of the reporting person, subject to the consent of the reporting person, a recording of the meeting may be made by the person receiving the report. If the meeting is not to be recorded, accurate minutes should be taken. Where the reporting person has disclosed their identity, they must be offered the opportunity to check, verify and agree the minutes by signing them.

Reports shall be retained for no longer than is necessary and proportionate to comply with the provisions of the Act or any other enactment.