

**Department of
Social Protection**

**September
2022**

**Policy and
Guidance for
Protected
Disclosures
Reporting**



Version Control

Version	Date	Created/Amended	Approved By	Revision Remarks
1	June 2016	IAU	MB	
2	Sept 2022	SQ/PD Group	MB	Includes amendments to reflect the PD (Amendment) Act 2022 which transposes the Directive (EU) 2019/1937.



1. Introduction

The Protected Disclosures Act 2014 and the Protected Disclosures (Amendment) Act 2022 ('the Acts') provides a statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the workplace. The Acts provides workers who contend that they have been penalised for making a report of possible wrongdoing with access to significant protections and scope for securing redress. The Department of Social Protection is committed to fostering an appropriate environment for addressing concerns relating to potential wrongdoing in the workplace and to providing the necessary support for workers who raise concerns in good faith.

2. Purpose

This document outlines the Department's policy and procedures for dealing with genuine concerns by workers who have a reasonable belief that wrongdoing has occurred and/or is ongoing.

This policy should be read in conjunction with the *Guidance for Making and Dealing with Concerns raised under the Protected Disclosures Acts* at Appendix 1.

3. Scope

The policy applies to all workers as defined in the Acts. Workers are all staff, volunteers, interns of the Department, certain job candidates to the Department, contractors, consultants, suppliers, and staff employed in Social Welfare branch offices.

4. What is a Protected Disclosure?

A protected disclosure is a disclosure of information which in the *reasonable belief* of the worker tends to show one or more *relevant wrongdoings*. The wrongdoing must come to the worker's attention *in connection with his or her employment* and should be disclosed as outlined in the guidance at Appendix 1. The Acts are intended to deal with disclosures in the public interest and for connected purposes. This normally involves wrongdoings that are likely to cause harm to the Department itself or to the public at large, as opposed to personal complaints.

'Reasonable belief'

The term "reasonable belief" means that the belief that a wrongdoing has occurred is based on reasonable grounds. This does not mean that the belief must be correct. A worker has the right to be wrong in his/her reasonable belief.

The motivation of the worker for making a disclosure is irrelevant when determining whether what has occurred is a disclosure protected by the Acts.

The disclosure will be assessed based on how a reasonable person would respond to the information available to him or her at the time that the disclosure was made.

'Relevant wrongdoings'

The definition of 'relevant wrongdoing' includes:

- Criminal offences;
- Failure to comply with legal obligations;
- Miscarriages of justice;
- Health and safety matters;
- Environmental damage;
- Unlawful or improper use of funds or resources of the Department;
- An act or omission by or on behalf of a public body which is oppressive, discriminatory, grossly negligent or constitutes gross mismanagement
- Certain breaches of EU law, e.g., procurement, data protection.
- Concealment or destruction of information relating to any of the foregoing.

A matter is not a relevant wrongdoing if it is a matter concerning interpersonal grievances exclusively affecting the reporting person

'In connection with their employment'

The information must come to the attention of the worker in connection with their employment. A matter is not a relevant wrongdoing if it is a matter which it is the function of the worker or the worker's employer to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of the employer.

5. Roles and Responsibilities

Overall responsibility for implementing legislation, policies and guidance pertaining to protected disclosures rests with the Management Board of the Department.

A group (the 'Protected Disclosures Group' or '*PDG*') comprising the Head of Internal Audit, the Principals with responsibility for Data Protection Unit, Human Resources, and a Divisional Unit (other business areas may also have a role depending on the nature of the case) will have responsibility for assessing submissions, and referring cases, where applicable, to the appropriate area for investigation. (See Appendix 1, section 3)

A person (a 'reporting person') making a report of a concern (a 'disclosure') must have a reasonable belief that a wrongdoing occurred.

A recipient of a report in most cases is expected to be the Principal Officer (PO) to whom the worker reports. The PO must immediately report the disclosure to the Head of Internal Audit or any PDG member.

6. Policy Statement

In implementing protected disclosure legislation, the Department's policy is:

- To encourage and enable workers to raise reasonable concerns regarding possible wrongdoing safely in the workplace rather than overlooking a problem or 'blowing the whistle' externally.
- To assess and/or investigate such reports in a thorough, competent, and timely manner.
- To take reasonable steps to ensure that penalisation¹ does not arise regarding a person making a report of a concern, provided it was made based on a reasonable belief that wrongdoing occurred. This includes investigation of claims of penalisation and consideration of disciplinary action where warranted.
- To treat seriously cases where workers make allegations of wrongdoing without a reasonable belief that the wrongdoing occurred. The protections of the Acts may not apply to such workers, and they may be subject to disciplinary action if, for example, an allegation of wrongdoing was known to be untrue or misleading or was frivolous or vexatious.
- To deal with allegations made against individuals having due regard for the principles of natural justice and fair procedures which may include a right to challenge the evidence against him/ her.

This policy complements the normal handling of issues which takes place in the ordinary course of business.

The report of a wrongdoing does not confer any protection or immunity on a worker in terms of his/ her involvement in that wrongdoing.

7. What type of Report is not covered by this Policy and Guidance?

It is to be expected that concerns which relate to day-to-day operational matters will in the normal course of events, be brought to the attention of the relevant line manager and dealt with accordingly.

Personal concerns, for example, regarding an individual's own terms and conditions of employment or bullying/harassment claims, would not be regarded as protected disclosures and would be more appropriately processed under the Grievance and Dignity at Work Procedures.

8. Anonymous Reporting

The Department will accept anonymous reports and they will be acted upon to the extent that this is possible and reasonable, given the constraints in obtaining further information. Workers are encouraged to put their names to allegations, with the assurance of confidentiality where possible, in order to facilitate appropriate follow up.

¹ "Penalisation" includes dismissal and/or causing detriment to a worker and can relate also to the actions of co-workers. It is defined in Section 3 (1) of the 2014 Act.

However, the protections available under the Acts and other elements of the protected disclosures procedure (e.g., keeping the reporting person informed) cannot in those circumstances be accessed by a worker who makes an anonymous.

9. Review of Policy and Guidance

The guidance will be subject to review as practices and policies or legal requirements pertaining to protected disclosures develop.

Issued on behalf of the Management Board.

September 2022.

Appendix 1

GUIDANCE FOR MAKING AND DEALING WITH CONCERNS RAISED UNDER THE PROTECTED DISCLOSURES ACTS 2014 & 2022

1. Procedure when making a report (or “*disclosure*” as per the PD Acts)

To whom should the report be made?

Any worker who has a reasonable belief in relation to a wrongdoing/s as set out in the Protected Disclosure Policy (“the policy”) should report (or “*disclose*”² as per the Acts) the relevant information to his/her Principal Officer in the first instance.

Where the reporting person is a Principal Officer, he/she should report to a member of the Management Board.

Workers are entitled to make reports outside of their line management and such reports can be made to the Head of Internal Audit.

Although workers are encouraged to use the internal channels in the first instance to make a report, they may also contact an appropriate external party (e.g., Minister of Social Protection, Protected Disclosures Office, Comptroller and Auditor General, Data Protection Commission)³. However, stringent requirements need to be met for reports made externally to qualify for protections under the Acts.

How should a report be made?

A report may be made either verbally or in writing.

What information should be provided?

Workers need to communicate information which on the basis of a reasonable belief either shows, or tends to show, wrongdoing which occurred and/or is ongoing in connection with their employment. This normally involves wrongdoing that is likely to cause harm to the Department, as opposed to personal complaints.

Reporting ‘information’ is generally conveying information, such as stating that particular events have occurred. This is different to simply making an allegation on the basis of a suspicion that is not founded on anything tangible.

² “disclosure”, in a case in which information disclosed is information of which the person receiving the information is already aware, means bringing to the person’s attention;

³ The external channels are outlined in Sections 7, 8, 9 and 10 of the Act and in Statutory Instrument 339 of 2014. There are stringent requirements set out in Section 10 for the alternative external reporting to qualify as protected disclosures under the Act.

At a minimum, reports should include the following details: -

- The reporting person's name, position in the organisation, place of work and contact details;
- The date or time period 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 to any member of management and if so when and to what effect;
- The details of the alleged wrongdoing and any supporting information;
- The name of the person(s) (if known or applicable) allegedly involved in the alleged wrongdoing;
- Any other relevant information.

Workers should also report any alleged penalisation they have incurred in relation to the reporting of the concern.

When should a report of a concern be made?

Workers should make reports of potential wrongdoing at the earliest possible time after it has come to their attention. If the concern raised referred to matters which allegedly occurred in the past, on a practical level, it may be difficult or impossible to assess or investigate them

Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so.

2. Procedure for a Recipient on receiving a Report

Principal Officers should advise the Head of Internal Audit or any member of the PDG as soon as possible on receipt of a report. The PDG will meet as soon as feasible to make an initial assessment.

3. PDG Assessment of a Reported Concern

The disclosure will be assessed to examine what actions are needed to deal with the matter. It will determine whether

- the reporting person has a reasonable belief that wrongdoing occurred and,
- the potential wrongdoing is a 'relevant wrongdoing' within the meaning of the Acts and,

the potential wrongdoing was/ is in connection with the worker's work.

Experience to date has shown that types of concerns raised have been wide ranging. Based on the type, nature and complexity of concerns reported, the PDG will determine, where necessary, the next steps in the process to deal with the matters raised. This may involve simply clarifying certain matters, clearing up misunderstandings, further fact finding, investigation or examination by the Department or external party. The PDG will liaise with the relevant business areas in this regard.

Given that reports under the PD procedures may be of varying complexity, no specific time limit for assessments or investigations can be given, but they will always be treated with priority and be dealt with as soon as possible.

The PDG will acknowledge receipt of reports within seven days and give feedback to the reporting person within three months of the acknowledgement of receipt and at the end of the process. It is important to note that sometimes the requirement for confidentiality and legal considerations may prevent the giving of specific details of an investigation.

4. Investigation by an external party

If a worker makes a report to an external party, that party may decide the nature of any investigation that may take place (e.g., the C&AG). In such cases, the Department will co-operate fully with any investigation.

5. Protection against penalisation and support

If it is determined that penalisation is taking place following a report of a concern, all possible steps to protect the worker and to stop the penalisation will be taken. Disciplinary action against those responsible for the penalisation may need to be taken if appropriate.

6. Confidentiality

All reasonable steps will be taken to treat reports made in good faith in a confidential and sensitive manner. The worker's identity will not be disclosed without his/her consent, except where it is required by law or is necessary for the effective investigation of the relevant wrongdoing.

7. Records to be maintained by the Protected Disclosures Group

A database of reports and records relating to individual reports, are held by the PDG in a secure and confidential environment with access restricted to the PDG and the Internal Audit Unit. Access is managed by the Head of Internal Audit.

Records of all concerns and the outcome of an assessment and subsequent investigation will be maintained for a maximum of ten years after the closure of the case. The Department publishes anonymised statistics annually on www.gov.ie.

ENDS

Additional Information

[Protected Disclosures Act 2014](#)

[Protected Disclosures \(Amendment\) Act 2022](#)

[Gov.ie – DSP reports of protected procedures](#)

[WRC – code of practice relating to the Protected Disclosures Act 2014](#)

[DPER Guidance for the purpose of assisting public bodies in the performance of their functions under the Act:](#)