An Roinn Caiteachais Phoiblí
Sheachadadh PFN agus Athchóirithe
Department of Public Expenditure
NDP Delivery and Reform

Protected Disclosures Act

Statutory guidance for public bodies and prescribed persons

November 2023

Contents

Disclaimer

This Guidance does not constitute legal advice, or a legal interpretation of the Protected Disclosures Act 2014 (as amended). Where public bodies or prescribed persons are uncertain regarding the interpretation of the Act or its application, legal advice should be sought where necessary.

Foreword

We all benefit when workers speak up about wrongdoing in the workplace. Many important matters of public interest would never have come to light were it not for ordinary working people speaking up for the common good, regardless of the personal risk. There is an inherent link between whistleblowing and freedom of expression, one of the fundamental cornerstones of democracy.

This is why Ireland was one of the first countries in Europe to enact comprehensive statutory protections for whistleblowers in the Protected Disclosures Act 2014. We have since listened to the lived experiences, good and bad, of those who have gone through the protected disclosures process. The Protected Disclosures (Amendment) Act 2022 reflects what we have learned and ensures Ireland remains a world leader for the legal protections it gives to whistleblowers.

While the amended Act is a major step forward in this area, what really matters is how the legislation operates in practice. This Statutory Guidance is intended to help leaders and managers in the public sector understand what is required of them by the legislation and how to go about implementing an effective process for handling protected disclosures in their organisations. It is my hope that private sector organisations will also find this Guidance useful in respect of those provisions of the Act that apply to them.

Formal standards – such as the Act and this Guidance – form only a part of the overall picture, however. More than anything, it is the ethos and culture of an organisation that determines whether the concerns of workers are listened to and acted upon. Protected disclosures policies and procedures are only one part of a broader ecosystem of ethics and integrity that must form the bedrock of how the public sector serves the people of Ireland.

We, rightly, praise whistleblowers as “brave” and “courageous” but if we are serious about listening to what they have to say, we must take the necessary steps to create a culture where organisations want to hear uncomfortable truths and that bravery and courage are not required because raising concerns is part of the normal routine of business. This is a major challenge that I know the leaders of our public sector will accept and deliver on.

Paschal Donohoe TD

Minister for Public Expenditure, NDP Delivery and Reform

November 2023

1. Introduction

The Protected Disclosures Act 2014 (the "**Act**") protects workers from retaliation if they speak up about wrongdoing in the workplace.[1] Persons who make protected disclosures (sometimes referred to as "**whistleblowers**") are protected by this law. They should not be treated unfairly or lose their job because they have made a protected disclosure.

In 2019, the European Union adopted Directive 2019/1937 on the protection of persons who report breaches of Union Law (the "**Directive**").[2] The Directive introduces a common EU regime for the protection of persons who report breaches of EU law, and sets out, among other things, procedures for reporting channels, follow up of reports of breaches, prohibition of penalisation and provisions in relation to confidentiality. While many of the protections set out in the Directive were already provided for under the Act, an amendment to the legislation was required to implement all of the Directive's provisions. The Protected Disclosures (Amendment) Act 2022 was signed into law on 21 July 2022 and commenced operation on 1 January 2023.

The Act was further amended, on 19 July 2023, by the European Communities (Protection of Persons Who Report Breaches of Union Law) Regulations 2023 (S.I. No. 375 of 2023), which gives further effect to the Directive by providing for reporting to EU institutions and bodies.[3]

As well as transposing the provisions of the Directive, the amended Act takes into account experience gained since 2014 regarding the operation of the Act. In particular, it seeks to address a number of issues raised in the 2018 Statutory Review of the Act and by certain rulings concerning the Act in the Workplace Relations Commission and the courts.

The Act also establishes the Office of the Protected Disclosures Commissioner and appoints the Ombudsman as the Protected Disclosures Commissioner (the "**Commissioner**"). The Commissioner has been given a role in the handling of certain external reports made under section 7 of the Act (as amended) and reports made to Ministers under section 8 of the Act.

This Guidance revises, updates and supersedes the original Statutory Guidance, issued in 2015, and the Interim Guidance on the amended Act issued in 2022. While most of the text follows that of the 2022 Interim Guidance, a number of key revisions have been made in the following areas:

Section 5	Added description of the benefits of the Act to prescribed persons.
Section 6	New title. Added description of oversight role in sub-section 6.1. New sub-section 6.5 on intended outcomes of protected disclosures policies. New sub-section 6.6 on critical success factors in creating effective protected disclosures policies.

[1] https://revisedacts.lawreform.ie/eli/2014/act/14/front/revised/en/html

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1937

[3] https://www.irishstatutebook.ie/eli/2023/si/375/made/en/print

Section 7	New sub-section 7.6.4 on reports from members of the general public.
Section 8	Revised figure 2 comparing the reporting channels. New material on opening internal channels to aegis bodies in sub-section 8.3. New sub-section 8.7 inserted on handling of reports by the Commissioner. New sub-section 8.8 inserted concerning reporting to institutions, bodies, offices or agencies of the European Union. Expanded sub-section 8.10 on reporting to other third parties.
Section 9	Additional considerations in the design of reporting channels and new material on outsourcing of reporting channels in sub-section 9.3. Relationship with the National Archives Act 1986 in sub-section 9.6.1.
Section 10	Added requirement to notify date of original acknowledgement when transmitting reports between prescribed persons or by the Commissioner in sub-section 10.2.2. New introductory material on follow-up in sub-section 10.3.1. Requirement for a protocol for handling allegations against the Head of a public body in sub-section 10.3.5. Clarification of guidance vis-à-vis the system of review in sub-section 10.4.
Section 11	Clarification of rules (with examples) concerning the timing of feedback when external reports are transmitted between prescribed persons or by the Commissioner in sub-section 11.1.2.
Section 12	New sub-section 12.2 on protection from civil and criminal liability. Restructuring and expansion of sub-section 12.3 on preventing and dealing with penalisation.
Section 13	Expanded sub-section 13.2 on supports and advice available to reporting persons.
Section 14	Completely revised with standard templates for reporting by public bodies, prescribed persons and the Commissioner.
Appendix B	New Appendix containing an outline internal reporting policy for adaptation by employers as required.
Appendix C	New Appendix containing an outline external reporting policy for adaptation by prescribed persons as required.

2. Terminology used in the Guidance

Making a "**protected disclosure**" refers to a situation where a person who is or was in a work-based relationship with an organisation discloses information in relation to wrongdoing that the person has acquired in the context of current or past work-related activity. This is sometimes referred to as "**whistleblowing**". For the purposes of this Guidance such a person is referred to as a "**worker**" or "**reporting person**" and disclosing information in relation to alleged wrongdoing in accordance with the Act is referred to as "**making a report**" or "**making a disclosure**".

The Act provides specific remedies for reporting persons who are penalised for making a protected disclosure. For the purpose of this Guidance the term "**penalisation**" includes dismissal and any act or omission causing detriment to a reporting person. Penalisation can be caused not only by the reporting person's employer but also the reporting person's co-workers or otherwise in a work-related context. The Act provides significant forms of redress for penalisation and other loss.

A disclosure made under this Act may name persons alleged to be involved in or otherwise connected with the wrongdoing reported. Such persons – referred to as "**persons concerned**" – also have certain protections under the Act.

Persons who assist the reporting person in making a disclosure are also entitled to certain protections under the Act. These persons are referred to as "**facilitators**".

Section 6 of the Act provides that a reporting person may make a disclosure to their employer. This is referred to as "**internal reporting**". Where the employer has set up a formal channel and procedures for their employees to make disclosures, this is referred to as an "**internal reporting channel**".

Section 7 of the Act provides that a reporting person may make a disclosure to a person designated by the Minister for Public Expenditure, NDP Delivery and Reform ("**the Minister**"). Such persons – most of whom are the heads of statutory regulatory or supervisory authorities – are referred to as "**prescribed persons**".

The Act provides that a reporting person who is uncertain as to whom the most appropriate prescribed person they can report to may make a disclosure under Section 7 to the "**Protected Disclosures Commissioner**" ("**the Commissioner**"). The Commissioner also has a role under the Act in assessing and referring all disclosures made to Ministers of the Government and Ministers of State.

Where a reporting person makes a disclosure under Section 7 of the Act to a prescribed person or the Commissioner, this is referred to as "**external reporting**". Prescribed persons and the Commissioner are required to establish formal "**external reporting channels**" and procedures for reporting persons to make disclosures to them.

Where a public body or a prescribed person is required to establish an internal reporting channel or an external reporting channel or both, a "**designated person**" must be assigned with responsibility for the operation of the channel(s).

Under the Act, the Commissioner may transmit disclosures to third parties, other than prescribed persons, who the Commissioner considers to be the most appropriate persons to follow-up on the information reported. Such persons are referred to as "**suitable persons**".

3. Legal basis for the Guidance

Section 21(1) of the Act provides that the Minister for Public Expenditure, NDP Delivery and Reform may issue guidance to assist public bodies, prescribed persons, the Commissioner and suitable persons in the performance of their functions under the Act. The Minister may also issue guidance in respect of the information that must be published setting out how disclosures may be made to Ministers of the Government or Ministers of State.

This Guidance is issued with the aim of assisting the persons referred to above when establishing and maintaining reporting channels and procedures for the making of protected disclosures and for dealing with such reports of disclosures (referred to in this Guidance as "**Procedures**").

Section 21(2) of the Act provides that the persons referred to above *"shall have regard to"* this Guidance when establishing and maintaining such Procedures. This means that while the channels and procedures should be tailored according to the specific business needs of the organisations concerned, they should be in general conformity with the principles set out in this Guidance.

4. Key principles informing the Guidance

The following key principles inform this Guidance:

- All reports of wrongdoing in the workplace should, as a matter of routine, be the subject of an initial assessment and any appropriate follow-up action;
- The focus of the process should primarily be on the wrongdoing reported, and whether it is a relevant wrongdoing, and not on the reporting person;
- The identity of the reporting person and any person concerned should be adequately protected; and
- Provided that the reporting person discloses information relating to a relevant wrongdoing, in an appropriate manner, and based on a reasonable belief, no question of penalisation should arise.

If these principles are respected, there should be no need for reporting persons to access the protections and redress contained in the Act.

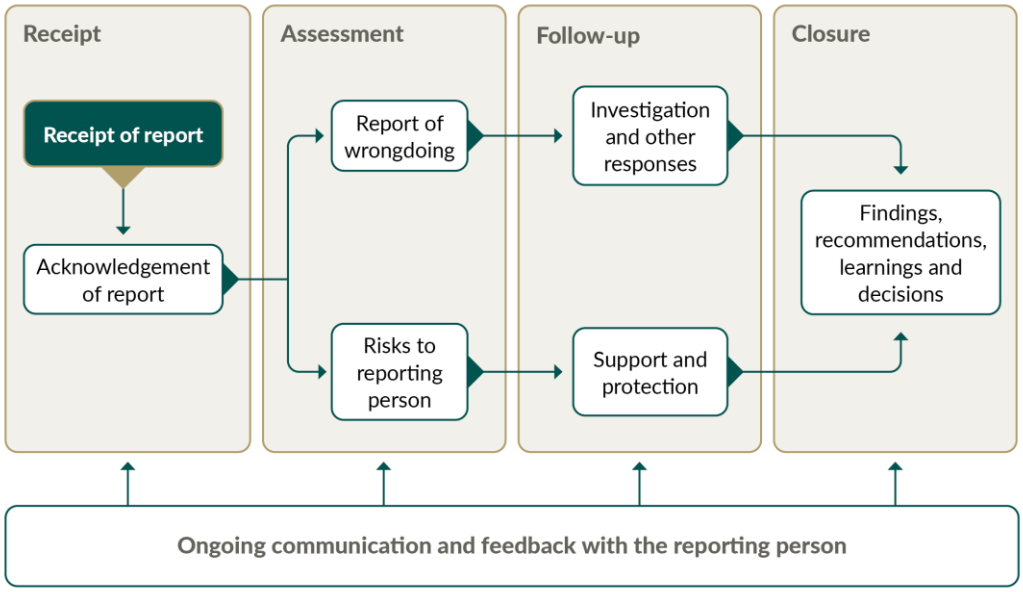

Figure 1: Overview of the Protected Disclosures Process

5. Requirement for and benefits of procedures

The Act requires all public bodies[4] to establish, maintain and operate internal reporting channels and Procedures to allow for the making of disclosures and for follow-up.

Similarly, prescribed persons and the Commissioner are required to establish, maintain and operate independent external reporting channels and Procedures for the making of disclosures and for follow-up.

For public bodies, having in place appropriate Procedures is central to encouraging workers to make disclosures internally to their employer in the first instance.

Internal disclosures facilitate public bodies in, for example:-

- deterring wrongdoing in the public body;
- ensuring early detection and remediation of potential wrongdoing;
- reducing the risk of external disclosure of confidential information;
- demonstrating to interested stakeholders, regulators, the courts and the public that the public body is accountable and managed effectively;
- improving trust, confidence and morale of workers in the public body;
- building a responsible and ethical organisational culture; and
- limiting the risk of reputational and financial damage.

[4] A "public body" is defined in section 3(1) of the Act as:

(a) A Department of State;

(b) A Local Authority;

(c) Any other entity established by or under any enactment (other than the Companies Acts), statutory instrument or charter or any scheme administered by a Minister of the Government;

(d) A company (within the meaning of the Companies Acts), a majority of shares are held by or on behalf of a Minister of the Government;

(e) A subsidiary (within the meaning of the Companies Act) of such a company;

(f) An entity established or appointed by the Government or a Minister of the Government;

(g) Any entity (other than one within paragraph (e)) that is directly or indirectly controlled by an entity within any of the paragraphs (b) to (f);

(h) An entity on which any functions are conferred by or under any enactment (other than the Companies Acts), statutory instrument or charter; or

(i) An institution of higher education (within the meaning of the Higher Education Authority Act 197) in receipt of public funding.

Having appropriate Procedures in place is also a factor that a court or an Adjudication Officer in the Workplace Relations Commission may consider when hearing a claim alleging penalisation for having made a protected disclosure and when determining if it was reasonable for a reporting person to make an alternative external report of a disclosure.

Public bodies with regulatory and supervisory functions can find that being designated as a prescribed person under the Act helps them to effectively deliver on these statutory functions:

- As workers are often the first to know that a wrongdoing has occurred or is occurring, they can provide an important source of information to prescribed persons and provide opportunities for greater understanding of the sectors they regulate;

- Having effective policies and procedures for workers in the sector the prescribed person regulates to report wrongdoing builds trust among workers (and the general public) in the prescribed person, enhancing their reputation and encouraging more workers to come forward with concerns; and

- Promoting their role as a prescribed person and having clearly defined policies and procedures for handling reports helps ensure concerns are taken to the right place to be followed-up.

Having appropriate Procedures in place provides a safe platform for reporting persons who wish to make a protected disclosure to do so in the confidence that they have the protections of the Act.

6. Organisational context for the Procedures

6.1 Responsibility

Overall responsibility for Procedures for internal reporting should rest with the head of the public body. In the case of a Government Department, this should be the Secretary General. In other public bodies, it should be the chief executive (or the person who holds an equivalent role to that of a chief executive).

Overall responsibility for Procedures for external reporting should rest with the person designated as the prescribed person under the Protected Disclosures Act. Similarly overall responsibility for Procedures for handling reports received or referred to the Office of the Protected Disclosures Commissioner lie with the Protected Disclosures Commissioner.

Oversight of Procedures should rest with the Board of the public body, the Management Board of the Government Department, and the equivalent body in the prescribed person. This oversight role should include:

- Approving the Procedures and ensuring they are in compliance with the Act and have had due regard to this Guidance;
- Ensuring adequate resources are allocated and assigned to operate the Procedures effectively;
- Ensuring the Procedures are integrated into the organisation's business processes (including financial management, risk management, procurement, audit, HR, IT, etc.); and
- Reviewing the Procedures at regular intervals and improving and updating them as required.

Day-to-day responsibility for Procedures should be delegated to an appropriate function of the public body or prescribed person with the requisite authority, independence, knowledge and expertise to operate the Procedures correctly. This is a matter for individual public bodies and prescribed persons to consider in the context of their own particular structures and resources.

Public bodies should also consider appointing a senior individual in the organisation to "champion" the protected disclosures process, and to promote and drive cultural change and a change in attitudes to protected disclosures among all employees of the body.

6.2 Policy statement

Each public body should incorporate as part of its Procedures a succinct policy statement confirming the Board / Management commitment to creating a workplace culture that supports the making of protected disclosures and provides protection for reporting persons. The policy statement should also cover the workplace disclosure options available and the protections available for reporting persons.

Prescribed persons and the Commissioner should include a similar policy statement in their Procedures, confirming that protections are provided for reporting persons, what these are and how they can be accessed, and the alternative options for making a report that are available.

These policy statements should, where relevant, make reference to and be aligned with any corporate policies pertinent to the workplace culture already in place in the organisation, such as: mission statements; strategy statements; people strategies, codes of governance/behaviour/ethics; environmental, social and governance (ESG) policies, etc.

6.3 Application

The Procedures should set out clearly to whom they apply and the types of wrongdoings that can be reported. Refer to section 7 for more information on what constitutes a protected disclosure and who can make one.

For public bodies, the Procedures should apply to all workers as defined in section 3(1) of the Act, which includes current and former employees, independent contractors, trainees, agency staff, volunteers, board members, shareholders and job candidates.

For prescribed persons, the Procedures should apply to all workers who wish to report a relevant wrongdoing that relates to the matters for which they have been designated a prescribed person by the Minister under statutory instrument. These matters should be clearly set out in the Procedures.

6.4 Awareness

Public bodies should ensure that information on how to access and use the internal reporting channel and copies of the Procedures applying to the internal channel are easily accessible to their workers, having due regard to language, disabilities, etc. Public bodies should actively promote the existence of the internal reporting channel to their workers.

Prescribed persons and the Commissioner should ensure that information on how to access and use their external reporting channels is easily available to the public, by publishing this information on their website and having due regard to language, disabilities, etc.. Prescribed persons should actively promote the existence of the external reporting channel among workers in the sectors they regulate or supervise.

Public bodies, prescribed persons and the Commissioner should also provide information as to where workers can seek independent advice and support if they are considering making a protected disclosure or have made a protected disclosure. Exchequer funding is provided to Transparency International Ireland for the provision of a free Speak-Up Helpline and Legal Advice Centre in the regard. Advice and support may also be available from workers' trade unions as well as Citizens' Advice.

6.5 Intended outcomes

Protected disclosures Procedures should be designed with the following outcomes in mind:

- Protecting the public interest by encouraging and facilitating the reporting of wrongdoing;
- Supporting and protecting reporting persons, persons concerned and any other persons involved;
- Ensuing that reports of wrongdoing are dealt with in a proper and timely manner in accordance with the Act;

- Improving overall organisational culture and governance in the organisation concerned; and
- Reducing the risks of financial or reputational damage or exposure to legal action that may arise from any wrongdoing occurring in the organisation concerned.

6.6 Critical success factors

Protected disclosures policies and procedures will be more effective when they form part of a comprehensive and coherent compliance and integrity programme. Research from the Netherlands[5] suggests that it is the overall culture and behaviour of the organisation that determines how successful its whistleblowing management system will be. This research identified the following four preconditions for the successful operation of a reporting system:

1. Transparency.

It is essential to provide clarity to workers about: the types of wrongdoing that can be reported; where and to whom it can be reported; who will be involved in the handling of reports; how reports will be followed-up; when feedback will be given; and what feedback will be given (including information on what cannot be shared). Transparency and clear communication of this information contributes to the confidence workers will have in the reporting system.

2. Reliability

The confidence a worker has in the reporting system is related to their expectations and to previous (positive and negative) experiences of theirs and their colleagues. Reliability also depends on the professionalism of the staff handling the report and their interaction with the reporting person. The reporting person must feel heard and taken seriously and experience the process as fair. Critical to this is having the right people with the right balance of technical expertise and interpersonal skill to manage the reporting process.

3. Clear communication

Clear communication is essential for both transparency and reliability. This applies not only to communication with the reporting person but also with any other parties involved in the response to the report. It must be clear from the outset what information can and must be shared and what information cannot be shared (and why). Good coordination across the lines of communication helps all of those involved fulfil their role in the process.

4. Organisational learning

It is essential that organisations continually monitor and evaluate the effectiveness of their reporting processes and learn from the experience of handling reports. This learning process involves two levels. The first level consists of improvements in the reporting process itself. The second consists of improvements in the functioning of the organisations, for example in its business processes or in its

[5] Hoekstra, A and Verbraeken, K. "Beyond the formality: Preconditions for well-functioning internal reporting procedures and processes". *Compliance, Ethics and Sustainability*. 2023. No.1. pp. 25-31. English translation available at: https://www.huisvoorklokkenluiders.nl/Publicaties/publicaties/2023/03/01/voorbij-de-formaliteit

organisational culture. Learning lessons at these two levels contributes to better reporting processes and systems and also helps avoid future wrongdoing.

7. What is a Protected Disclosure?

A protected disclosure, as set out in section 5 of 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 Procedures should contain guidance on what is meant by each of the highlighted terms in the paragraph above.

7.1 What is a "worker"?

For the purposes of the Act a worker means an individual who has acquired information on a relevant wrongdoing in a work-related context.

A worker includes:[6]

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

[6] Per the definition of "worker" at section 3(1) of the Act.

Civil Servants, members of An Garda Síochána, members of the Permanent Defence Forces and members of the Reserve Defence Forces are also deemed to be workers under the Act.[7]

Additional categories of worker are now covered under the Act, following its amendment in 2022, and these are set out at e) to i) above. Public bodies should note in particular the following:

- Individuals who are or were members of the administrative, management or supervisory body of an undertaking, including non-executive members are now included within the scope of the Act. This will include the members of any Board (or similar) appointed to a public body. Furthermore, in the context of local government, it is considered that members of a local authority (i.e. county/city councillors) are included in the scope of the Act by virtue of this provision. The Procedures of relevant public bodies should reflect this and provide for making of reports by this category of workers accordingly.

- Volunteers are also now within the scope of the Act. Public bodies that work with and interact with volunteers, both formally and informally, should particularly take note of this, and it should be clear that Procedures allow for reports to be made by such persons.

- Legal advisors, where information comes to their attention while providing legal advice, are excluded from the protections of the Act.[8] Where a claim to legal professional privilege could be maintained in respect of such information, it will not be a protected disclosure if it is disclosed by the legal advisor. This is the position whether the legal advisor is employed or not employed by the public body.

For the purposes of the Act, in relation to the categories of worker at a) to i) above, the employer of a worker is considered to be:

a) the person with whom the worker entered into, or for whom the worker works or worked under, the contract of employment,
b) the person with whom the worker entered into, or works or worked under, the contract,
c) the person:
    (i) for whom the worker works or worked; or
    (ii) by whom the individual is or was introduced or supplied to do the work,
d) the person who provides or provided the work experience or training;
e) the undertaking of which the worker is or was a shareholder,
f) the undertaking, the administrative, management or supervisory body of which the worker is or was a member,
g) the person for whom the individual is or was a volunteer,
h) the person by whom or on whose behalf the recruitment process concerned is or was carried out, or

[7] Per Section 3(2)(a) of the Act

[8] Per Section 5(6) of the Act

i) the person by whom or on whose behalf the pre-contractual negotiations are or were carried out.

7.2 What are "relevant wrongdoings"?

For the purposes of the Act, the following are relevant wrongdoings:[9]

a) that an offence has been, is being or is likely to be committed;
b) that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services;
c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
d) that the health or safety of any individual has been, is being or is likely to be endangered;
e) that the environment has been, is being or is likely to be damaged;
f) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur;
g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement;
h) that a breach of specified EU law set out in the Directive has occurred, is occurring or is likely to occur; or
i) that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed or an attempt has been, is being or is likely to be made to conceal or destroy such information.

It is immaterial whether a relevant wrongdoing occurred, occurs or would occur in Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other country or territory.[10]

Reports may also be made by workers of wrongdoing in respect of other relevant employment-specific or profession-specific obligations, which may not be covered by the definition of wrongdoing in section 5 of the Act and may be covered by other statutory protection for reports. The public body should consider the extent to which it is necessary to include references to reports that tend to show relevant employment-specific or profession-specific wrongdoing and, if this is necessary, any other statutory protections and requirements that apply to such reports; any appropriate internal protections to be provided for reports that are not provided for by statute; and how reporting persons in such circumstances may be made aware of any risks that may arise for them. For example, a person may make a complaint under the Medical Practitioners Act 2007.

[9] Per section 5(3) of the Act.

[10] Per section 5(4) of the Act.

The term "**wrongdoing**" or "**wrongdoings**" referenced in these Guidelines is to be taken to refer to one or more of the relevant wrongdoings referenced in section 5 of the Act and Section 7.2 of this Guidance.

7.3 What is a "disclosure of information"?

A protected disclosure should contain "information" which tends to show wrongdoing. The ordinary meaning of disclosing "information" is conveying facts, such as stating that particular events have occurred.

The Supreme Court has held that to qualify as a protected disclosure a statement must contain "*such information – however basic, pithy or concise – which, to use the language of … the 2014 Act, "tends to show one or more relevant wrongdoings" on the part of the employer …*" and "*the disclosure must have "sufficient factual content and specificity" for this purpose … even if it does merely by necessary implication*"[11]. This is different to simply making an allegation on the basis of a suspicion that is not founded on anything tangible, however the general context of any statement would need to be assessed to determine if it qualified as a protected disclosure.

For example, if a worker was communicating information about the state of a hospital then a statement that "you are not complying with Health and Safety requirements" would appear to be a mere allegation that does not contain specific factual information that tends to show a relevant wrongdoing, although the context in which the statement was made would need to be considered. That statement also does not provide sufficient factual information to allow an assessment and/or investigation and further information would be useful for that purpose.

By contrast, a statement that "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around." would be more likely to include information tending to show a relevant wrongdoing. It would also be more useful to the hospital in terms of assessment, investigation and taking of appropriate action. Workers should be encouraged to provide specific factual information in any disclosure to allow the appropriate assessment and investigation of the disclosure.

Workers should be informed in the Procedures that they are not required or entitled to investigate matters themselves to find proof of their suspicion 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. The responsibility for investigating and addressing any wrongdoings lies with the public body or prescribed person, not the reporting person.

7.4 What is "reasonable belief"?

A reporting person must have a reasonable belief that the information disclosed shows, or tends to show, wrongdoing. The term "reasonable belief" does not mean that the belief has to be correct. Reporting persons are entitled to be mistaken in their belief, so long as their belief was based on

[11] Baranya v Rosderra Irish Meats Group Limited [2021] IESC 77

reasonable grounds. The High Court has determined that "*Some form of objective basis for such a belief must exist in order for it to constitute a "reasonable belief", as required by the 2014 Act*."[12]

It may be quite reasonable for a reporting person to believe that a wrongdoing is occurring on the basis of what he or she observes. A reporting person may not know all the facts of the case and as noted above, the reporting person is not obliged to find proof of their suspicion. In such a case the reporting person may have reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the reporting person was mistaken.

The Procedures should confirm that no reporting person will be penalised simply for getting it wrong, so long as the reporting person had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing. The Procedures should, however, also state that a report made in the absence of a reasonable belief will not be entitled to the protections of the Act and could result in disciplinary or legal action being taken against the reporting person.

7.5 What is a "work-related context"?

The information must come to the attention of the reporting person in a work-related context. A work-related context means current or past work activities in the public or private sector through which, irrespective of the nature of these activities, the reporting person acquires information concerning a relevant wrongdoing, and within which the reporting person could suffer penalisation for reporting the information.

This definition has been introduced by the Directive and will be subject to interpretation by the Workplace Relations Commission and the courts. However, a work-related context will include the work activities of employees and contractors, but may also include the work activities of service providers, trainees, volunteers and job candidates. It may also include activities related to work such as training, travel and employer-arranged social events. The information does not need to become known as part of the reporting person's own duties, or even relate to the reporting person's own employer/contractor, as long as the information comes to the attention of the reporting person in a work-related context. The possibility of penalisation of the reporting person for reporting information will be a factor in determining if the context is a work-related context.

7.6 Reports that may not be protected disclosures

The Act is intended to deal with reports of relevant wrongdoing as defined in the legislation. The Procedures should include information concerning the types of reports that may not qualify as protected disclosures under the Act, as set out in this section.

7.6.1 INTERPERSONAL GRIEVANCES

A matter concerning interpersonal grievances exclusively affecting a reporting person, such as grievances about interpersonal conflicts involving the reporting person and another worker, or a

[12] Barrett v Commissioner for An Garda Síochána & Minister for Justice & Equality [2022] IEHC 86.

complaint to the employer or about the employer which concerns the worker exclusively, is not a relevant wrongdoing for the purposes of the Act.[13]

Care should be taken when assessing whether a potential protected disclosure concerns the worker exclusively. If the potential protected disclosure refers to information that could also apply to other workers, or other workers could also be affected, then it may be a relevant wrongdoing for the purposes of the Act.

The Procedures should confirm the distinction between an interpersonal grievance or a complaint concerning the worker exclusively, and a protected disclosure. The Procedures should also confirm that the Procedures are not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures.

Interpersonal grievances should generally be dealt with under the internal grievance, or dignity at work, procedures. If a matter is raised as a protected disclosure, but following the initial assessment referred to in Section 10.2, is determined in fact to be a grievance or dignity at work issue, it should be addressed under these procedures. For example, a worker may complain that there is a dispute between the worker and a manager concerning their duties or work practices,. That type of complaint should generally be dealt with under the grievance (or equivalent) procedure. As another example, a worker may claim that they are being bullied or harassed by a colleague. That type of complaint should generally be dealt with under the dignity at work (or equivalent) procedure. Again, care should be taken to confirm that the complaint concerns an interpersonal grievance exclusively affecting a reporting person.

Public bodies should review their grievance and dignity at work procedures and seek to align these with the Procedures relating to protected disclosures insofar as is appropriate and feasible.

If public bodies are unclear as to whether a report is an interpersonal grievance exclusively affecting a reporting person / a complaint concerning the worker exclusively, or a protected disclosure, they should consider seeking legal advice.

7.6.2 FUNCTION OF WORKER OR EMPLOYER TO DETECT WRONGDOING

Section 5(5) of the Act provides that a matter is not a relevant wrongdoing (and does not come within the terms, or attract the protections and redress of the Act) if 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.

Even if the wrongdoing is a function of the reporting person to detect, investigate or prosecute, it will still be a protected disclosure if the wrongdoing involves an act or omission on the part of the employer. The High Court has stated that "*there are two requirements (an investigative function and misconduct other than by the employer), which must both be present to exclude something from the definition of relevant wrongdoing*"[14].

[13] Per section 5(5A) of the Act.

[14] Clarke v GGI Foods [2020] IEHC 368

The High Court has offered the following examples of where the exclusions may and may not apply: "*An obvious example may be where a member of An Garda Síochána reports wrongdoing by a person outside of An Garda Síochána. Such wrongdoing will not be covered by the 2014 Act where it relates to wrongdoing which it is the function of the Gardaí to detect, investigate or prosecute and as the wrongdoing will not have been committed by the employer. Another example might be a Revenue inspector who identifies wrongdoing during the course of an audit. A disclosure of relevant information in relation to such wrongdoing would not be a protected disclosure because it is the function of the Revenue to detect, investigate and prosecute revenue wrongdoings. Where the wrongdoing relates to practices within the Gardaí or the Revenue, however, s.5(5) will not serve to exclude from the scope of s. 5(2) relevant information in relation to those practices even though the disclosure is made by a member of An Garda Síochána or a Revenue official*".[15]

The High Court held that, as a limitation on the scope of the protection available under the 2014 Act, this exclusion falls to be narrowly construed and in general the language of "function to detect, to investigate or to prosecute" connotes either a public law role or at least an official role pursuant to a particular contractual obligation in detecting, investigating or prosecuting rather than a role which might be implied as arising from the general duties on an employer.

The High Court also held that this exclusion did not apply to the general obligation of an employer to investigate wrongdoing in the workplace, for example the obligation of an employer to investigate a health and safety complaint from an employee.

7.6.3 MANDATORY REPORTING

The Act does not oblige a worker to make a protected disclosure and it also does not absolve any worker from mandatory obligations to report contained in other legislation. There are several other pieces of legislation which contain mandatory reporting provisions and any relevant mandatory reporting requirements should be dealt with where necessary and appropriate in separate and distinct policies and procedures. Where such mandatory provisions exist in respect of a particular sector, public bodies may need to seek legal advice as regards what information should be provided to workers as regards the relationship between said mandatory provisions and the Protected Disclosures Act.

7.6.4 REPORTS FROM NON-WORKERS OR THE GENERAL PUBLIC

In order for a report to qualify as a protected disclosure, it must be made by a worker and the information that the worker has reported has come to them in a work-related context. Reports that do not fulfil these criteria are not protected disclosures and do not need to be dealt with in the manner specified by the Act. This does not mean that such reports should be ignored – it is in the public interest that credible reports of wrongdoing should be followed-up on regardless of the source of such information. Such follow-up may be carried out in accordance with other procedures the body may have for addressing such matters (e.g. a customer complaints process) or may need to be followed-up in an *ad hoc* manner. If there is any uncertainty or doubt as to whether the reporting person is a

[15] Nolan v Fingal CC [2022] IHEC 335

worker, it is advised that their report be treated as a protected disclosure until the position can be clarified.

8. Making a Protected Disclosure

Disclosure to:	Employer (Internal report)	Prescribed person (External report)	Commissioner (External report)
Specific sections of the Act	5, 6, 6A	5, 7, 7A	5, 7, 10B, 10C
Who does this apply to?	A worker of the employer. A worker of another employer where the wrongdoing relates solely/mainly to the conduct of that employer or for which the employer has legal responsibility.	A worker.	A worker.
Conditions for protection under the Act	Came to attention in work-related context. Reasonable belief that information tends to show relevant wrongdoing.	Came to attention in work-related context. Reasonable belief that: • Information tends to show relevant wrongdoing; • Information and any allegations are substantially true; and • Relevant wrongdoing relates to matter for which person is prescribed.	Came to attention in work-related context. Reasonable belief that: • Information tends to show relevant wrongdoing; and • Information and any allegations are substantially true.
Anonymous reports	Public bodies are required to accept.	Must accept unless prohibited by other legislation.	Must accept.
Method of reporting	In writing or orally or both (at choice of employer).	In writing and orally.	In writing and orally.
Obligations on recipient	Acknowledge within 7 days. Diligently follow-up on information reported. Provide feedback within 3 months. Provide ongoing feedback at 3 month intervals (on request).	Acknowledge within 7 days, unless requested not to or to do so would jeopardise protection of reporting person's identity. Diligently follow-up on information reported. Provide feedback within 3 months (or 6 months in exceptional cases) Provide ongoing feedback at 3 month intervals (on request) Provide information on final outcome of any investigation triggered by report.	Acknowledge within 7 days, unless requested not to or to do so would jeopardise protection of reporting person's identity. Transmit the report within 14 days (or longer in exceptional circumstances) to: • Such prescribed person(s) as the Commissioner considers appropriate; or • Another suitable person (other than a prescribed person) as the Commissioner considers appropriate. If no prescribed person or suitable person can be identified, the Commissioner shall follow-up directly on the report in the same manner as a prescribed person.

Figure 2a. Comparison of the main disclosure channels

Disclosure to:	EU Institutions (External report)	Minister (Other)	Other Third Party
Specific sections of the Act	5, 7B	5, 8, 10D	5, 10
Who does this apply to?	A worker.	A worker who is or was employed by a public body.	A worker.
Conditions for protection under the Act	Came to attention in a work-related context. Reasonable belief that: • Information on breaches reported was true at time of reporting; and • Information falls within the scope of EU Directive 2019/1937 (the Whistleblowing Directive).	Came to attention in work-related context. Reasonable belief that information tends to show relevant wrongdoing. Meets **one** of the following conditions: • Has reported internally and/or externally but reasonably believes no action or insufficient follow-up action taken; • Reasonably believes the Head of the public body concerned is complicit in the wrongdoing; • Reasonably believes wrongdoing may constitute imminent or manifest danger to public interest.	Came to attention in a work-related context. Reasonable belief that: • Information tends to show relevant wrongdoing; and • Information and any allegations are substantially true. Meets **one** of the following conditions: • Has reported internally and/or externally and/or to a Minister but reasonably believes no action or insufficient action taken; • Reasonably believes: o Relevant wrongdoing may constitutes an imminent or manifest danger to the public; or o Reporting internally or externally or to a Minister will lead to penalisation or there is a low prospect of the wrongdoing being addressed.
Anonymous reports	Not specified in the Act. Individual EU institutions may have their own rules or policies on anonymous reporting.	Must accept.	At choice of recipient.
Method of reporting	Not specified in the Act. Individual EU institutions may have policies on methods of reporting.	At choice of Minister.	At choice of recipient.
Obligations on recipient	Not specified in the Act. Individual EU institutions may be subject to specific obligations as regards the handling of reports.	Transmit the report to the Commissioner within 10 days of receipt. On receipt the Commissioner shall: • Acknowledge within 7 days, unless requested not to or to do so would jeopardise protection of reporting person's identity. • Transmit the report within 14 days (or longer in exceptional circumstances) to: o Such prescribed person(s) as the Commissioner considers appropriate; or o Another suitable person (other than a prescribed person) as the Commissioner considers appropriate. • If no prescribed person or suitable person can be identified, the Commissioner shall follow-up directly on the report in the same manner as a prescribed person.	None.

Figure 2b. Comparison of the main disclosure channels

8.1 Overview

The Procedures for both internal and external reporting should include guidance on how a worker should make a protected disclosure and what it means to make a protected disclosure in a manner prescribed by the Act. The Procedures should make it clear that the worker must make a report in the manner set out in the Act to gain the protections of the Act and that higher standards apply when the protected disclosure is made externally.

The Act provides that protected disclosures can be made internally to the worker's employer and also externally to persons other than their employer where certain conditions set out in the Act are met. Different requirements need to be met in different cases, as set out below.

Information in relation to the options available and the requirements of each option should be set out in the Procedures. The Procedures should also make clear that it is solely the responsibility of the worker to satisfy themselves that they and their report meet the criteria for protection under the Act. The Procedures should signpost the worker to places where they can seek further information in this regard (see also section 13.2 of this Guidance).

8.2 Disclosure to the employer

It should be possible in most, if not all cases, for reporting persons to make protected disclosures internally to their employer. While public bodies cannot oblige reporting persons to make a protected disclosure internally in the first instance, as noted above it is preferable and more beneficial for public bodies that reports are made internally, and the Procedures should encourage reporting persons to do so. It should be confirmed that internal reports will be taken seriously and that the reporting person will receive appropriate protection.

Public bodies should state in the Procedures to whom protected disclosures should be made within the public body.

An impartial designated person or persons must also be appointed by the public body.[16] This designated person will be responsible for receiving and following up on reports, maintaining communication with the reporting person and where necessary, requesting further information from and providing feedback to the reporting person. See Section 9.4 for further information on designated persons.

The Procedures should state whether workers can make their reporting in writing or orally or both. If the Procedures allow for oral reporting, the public body must, on request, facilitate a physical meeting between the reporting person and the designated person for the purpose of making the report.

Public bodies should recognise that workers may raise concerns informally at first (with a line manager, for example) rather than immediately using the formal internal channels. This is particularly the case where the concern is a minor one, albeit that it may technically be a relevant wrongdoing

[16] Per section 6A(1)(c) of the Act.

under the Act (e.g. a minor health and safety concern). Where the line manager is comfortable doing so, these concerns can be addressed by the line manager in the first instance.

Should a worker raise such concerns with a line manager, there is no obligation to follow the requirements in the Act regarding formal acknowledgement, follow-up, feedback, etc., since these reports are not being made through the formal channel. The line manager may need to follow up on the concern and provide feedback to the worker, but this can be done in a more informal manner.

However, it should be noted that despite a concern being raised in an informal manner with a line manager, the worker may still be entitled to the protections of the Act. Line managers should have basic awareness of the Act and the protections it provides, and should be able to direct a worker to the formal internal reporting channel if necessary.

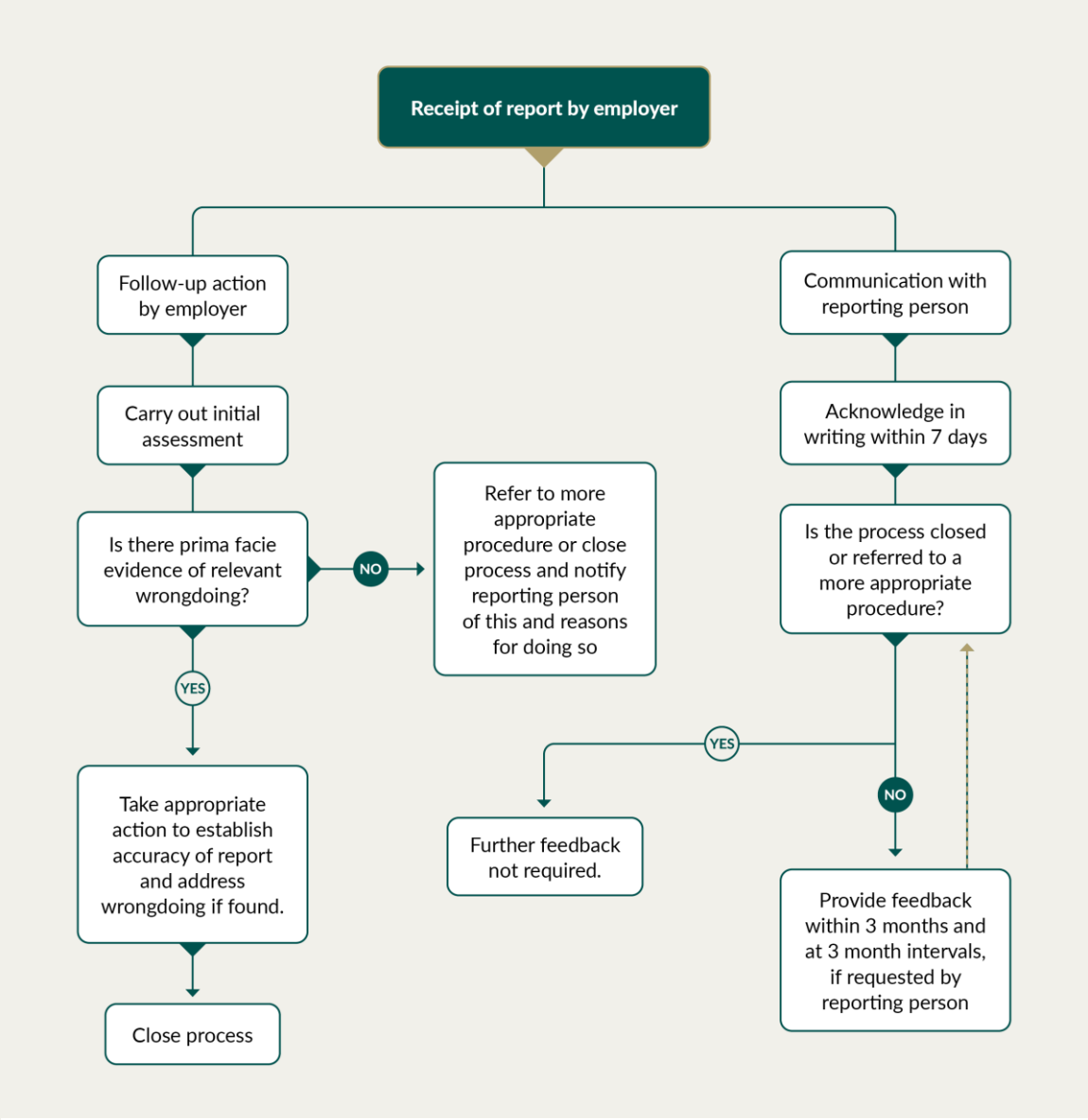

Figure 3: Internal reporting process

ANONYMOUS DISCLOSURES TO EMPLOYERS

A public body's Procedures should draw attention to the distinction between an anonymous disclosure (where identity is withheld by the reporting person) and confidential disclosures (where identity is protected by the recipient).

Public bodies should give a commitment that anonymous disclosures will be acted upon to the extent that is possible, while recognising that they may be restricted in their ability to investigate the matter in the absence of the knowledge of the identity of the reporting person.

While affording appropriate consideration to an anonymous disclosure, public bodies should also make it clear that important elements of the public body's Procedures (e.g. 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 Procedures should also make it clear that a reporting person cannot obtain redress under the Act without identifying themselves as part of the process of seeking redress.

Where the anonymous report contains enough information to allow an initial assessment that there is prima facie evidence that a relevant wrongdoing has occurred, follow-up action should be taken by the public body to the extent that is possible from the information provided. Where it is possible to communicate with the reporting person (e.g. they have made their report via an anonymous email account), it may be possible to seek further information from the reporting person in order to make a better initial assessment or as part of further follow-up action.

8.3 Disclosure to another responsible person

Where the worker reasonably believes that the wrongdoing relates solely or mainly to the conduct of a person other than the worker's employer, or to something for which that other person has legal responsibility, then the worker can disclose to that other person.[17]

For example, if a public body engaged a contractor company and an employee of a contractor became aware of a relevant wrongdoing in relation to the public body in a work-related context, then it may be more appropriate for the disclosure to be made directly to the public body rather than the individual's own employer.

Public bodies should consider whether individuals for whom the public body is not an employer under the Act – such as contractors and their employees, agency workers or persons working for suppliers – should be able to report to the public body directly via its internal reporting channels, in particular where there the potential for wrongdoing presents a high financial and/or reputational and/or other serious risk to the public body.

Public bodies should also consider whether internal reporting channels should be opened to workers in subsidiary bodies or agencies under the control of the public body (e.g. non-commercial agencies

[17] Per section 6(1)(b) of the Act.

of local authorities (such as arts or tourism bodies) or subsidiary company of a commercial State-owned enterprise).

If a report is received by a public body as a responsible person, but not through the internal channels, the report should nonetheless be dealt with in accordance with the procedures for handling internal reports.

Where a report appears to be directed to a Minister, it should be treated as a disclosure to a Minister (see Section 8.6, below, and Appendix D for further guidance).

BODIES UNDER THE AEGIS OF GOVERNMENT DEPARTMENTS

In respect of the opening up of internal channels to subsidiary organisations, Government Departments may wish to consider whether workers in bodies under their aegis should be able to make protected disclosures concerning wrongdoing in the aegis body to the parent Department. Careful consideration should be given to this on a body-by-body basis. Departments should bear in mind that the purpose of the Act is not only to allow for the reporting of wrongdoing but also that said reports should be received only by those in a position to determine if an alleged wrongdoing has indeed occurred and take corrective action to address the wrongdoing. While many bodies are subject to a high degree of control and scrutiny by their parent Department, many other bodies are statutorily (and sometimes Constitutionally) independent from their parent (e.g. most regulators). In the latter case, the extent to which the parent Department has the authority to take appropriate action to follow-up on and/or address an alleged wrongdoing may be limited or non-existent. In such situations, the utility of making the Department's internal channel available to staff in such bodies may be questionable.

8.4 Disclosure to prescribed persons

Certain persons are prescribed by the Minister for Public Expenditure, NDP Delivery and Reform to receive protected disclosures ("**prescribed persons**").[18] This includes the heads or senior officials of a range of bodies involved in the supervision or regulation of certain sectors of the economy or society.

A reporting person may make a protected disclosure to a prescribed person if the reporting person reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the prescribed person is prescribed. **However, the Act also provides an additional requirement in this case in that the reporting person must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true.**[19]

Public bodies should specify in their Procedures any prescribed person who is relevant to the particular public body. The Procedures should also refer to the list of prescribed persons at https://www.gov.ie/prescribed-persons to enable a worker to identify the prescribed person for any

[18] Per section 7(2) of the Act.

[19] Per section 7(1) of the Act.

other wrongdoing not relevant to the particular public body, but which has come to the attention of the worker in a work-related context.

An impartial designated person or persons must also be appointed by the prescribed person.[20] This designated person must be responsible for providing information on making an external disclosure, receiving and following up on reports, maintaining communication with the reporting person and where necessary, requesting further information from and providing feedback to the reporting person. See Section 9.4 for further information on designated persons.

Differing requirements that apply to prescribed persons are highlighted throughout the Guidance.

ANONYMOUS DISCLOSURES TO PRESCRIBED PERSONS

It is mandatory for prescribed persons and the Commissioner to accept and follow-up on anonymous disclosures,[21] unless there is a specific prohibition on doing so in the prescribed person's sectoral legislation.[22]

Procedures for prescribed persons should state that they may be restricted in their ability to investigate the matter in the absence of the knowledge of the identity of the reporting person.

While affording appropriate consideration to an anonymous disclosure, prescribed persons should also make it clear that important elements of the prescribed person's Procedures (e.g. keeping the reporting person informed) may be difficult or impossible to apply unless the reporting person discloses their identity. The Procedures should also make it clear that a reporting person cannot obtain redress under the Act without identifying themselves as part of the process of seeking redress.

Where the anonymous report contains enough information to allow an initial assessment that there is *prima facie* evidence that a relevant wrongdoing has occurred or if communication with the reporting person is possible (e.g. via an anonymous email account), follow-up action should be taken by the prescribed person to the extent that is possible from the information provided.

[20] Per section 7A(7) of the Act.

[21] Per sections 7A(12) and 10C(13) of the Act.

[22] For example, section 8 of the Standards in Public Office Act 2001 provides that the Standards in Public Office Commission "*shall not investigate a complaint made or referred to it unless the identity of the person making the complaint is disclosed to it*".

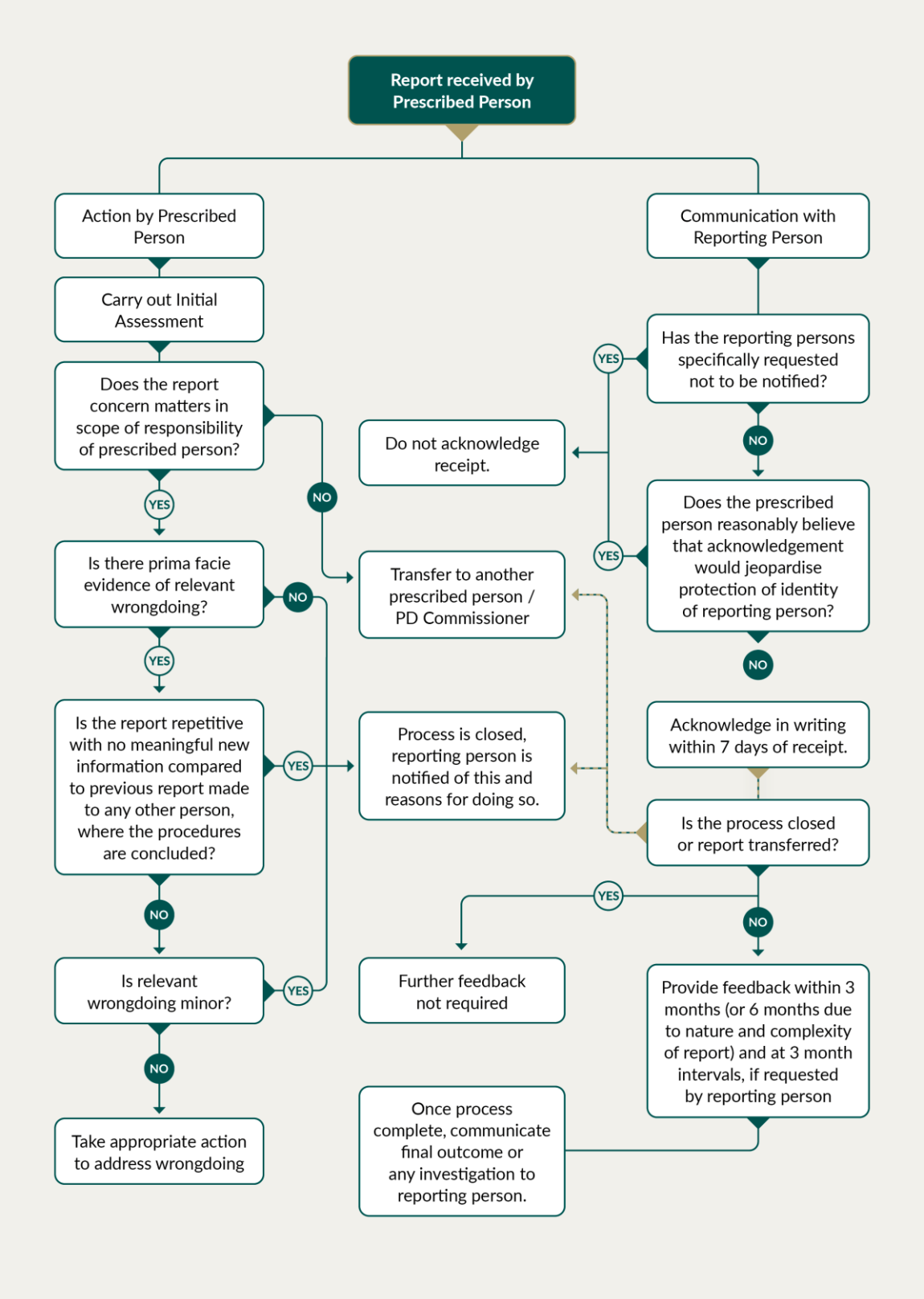

Figure 4: Prescribed person reporting process

8.5 Disclosure to the Protected Disclosures Commissioner

The Protected Disclosures (Amendment) Act 2022 created the Office of the Protected Disclosures Commissioner. The Commissioner has certain powers and responsibilities under the Act.

A worker may make a report to the Commissioner under the same conditions that apply to the making of a disclosure to a prescribed person – i.e. their report must concern a relevant wrongdoing that came to the worker's attention in a work-related context. The reporting person must also reasonably believe that the information disclosed, and any allegation contained in it are substantially true.[23]

The intent behind this provision in the Act is that in the event that a worker wishes to report externally under section 7 of the Act but there is no person prescribed in relation to the matter they wish to report or they are uncertain as to who the correct prescribed person to report to is, they have the alternative option of reporting to the Commissioner. The Commissioner will then identify and transmit the report to the person they consider most appropriate to follow-up. In exceptional cases the Commissioner will follow-up directly on a report.

Section 7A(1)(b)(vi)(I)(B) of the Act provides that where a prescribed person, having received a report via its external reporting channel and having assessed the report and found that the matter reported does not fall within the scope of the matters for which the person has been prescribed, said prescribed person shall transmit the report to such other prescribed person or persons as the prescribed person considers appropriate. Where no such other prescribed person or persons can be identified, the prescribed person must transmit the report to the Commissioner.

Section 8(3) of the Act provides that reports made to a Minister or a Minister of State must be transmitted to the Commissioner. See section 8.6, below, on the conditions for disclosure to a Minister.

Section 8.7, below, sets out how reports made to or transmitted to the Commissioner will be handled.

8.6 Disclosure to a Minister

If a worker is or was employed in a public body, the worker may make a protected disclosure to a relevant Minister.[24] The relevant Minister for the public body should be identified in the Procedures.

A "**relevant Minister**" is defined as a Minister with responsibility for the public body concerned in whom functions, whether statutory or otherwise, as respects the public body, are vested, or a Minister of State to whom any such function is delegated.[25] In general, this will be the Minister for the parent department of the public body.

[23] Per section 7(1) of the Act.

[24] Per section 8(2)(a) of the Act.

[25] Per section 8(5) of the Act.

In order to make a disclosure to a relevant Minister and qualify for protection under the Act, the worker must reasonably believe that the information disclosed tends to show one or more relevant wrongdoings; and one or more of the following must also apply:[26]

I. The worker has previously made a disclosure of substantially the same information to their employer, other responsible person, prescribed person, or relevant Minister, as the case may be, but no feedback has been provided to the worker in response to the disclosure within the period allowed, or, where feedback has been provided, the reporting person reasonably believes that there has been no follow-up or that there has been inadequate follow-up;

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

III. The worker reasonably believes that the disclosure contains information about a relevant wrongdoing that may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.

To ensure that the relevant Minister is aware of the worker's intention, it is recommended that the worker specify when making a disclosure under this channel that it is a disclosure to the named Minister under section 8 of the Protected Disclosures Act 2014.

Disclosures received by Ministers are required to be forwarded by Ministers to the Commissioner within 10 days of receipt.[27] If a Minister has received a disclosure prior to the commencement of the Protected Disclosures (Amendment) Act 2022 (i.e. before 1 January 2023) and follow-up of said disclosure has not been completed, that follow-up should be carried on and there is no requirement to transmit this disclosure or any subsequent correspondence to the Commissioner. Section 8.7, below, sets out how reports transmitted to the Commissioner will be handled.

See Appendix D for more detailed guidance for Ministers.

[26] Per section 88(2)(b) of the Act.

[27] Per section 8(3)(a) of the Act.

8.7 Handling of reports by the Commissioner

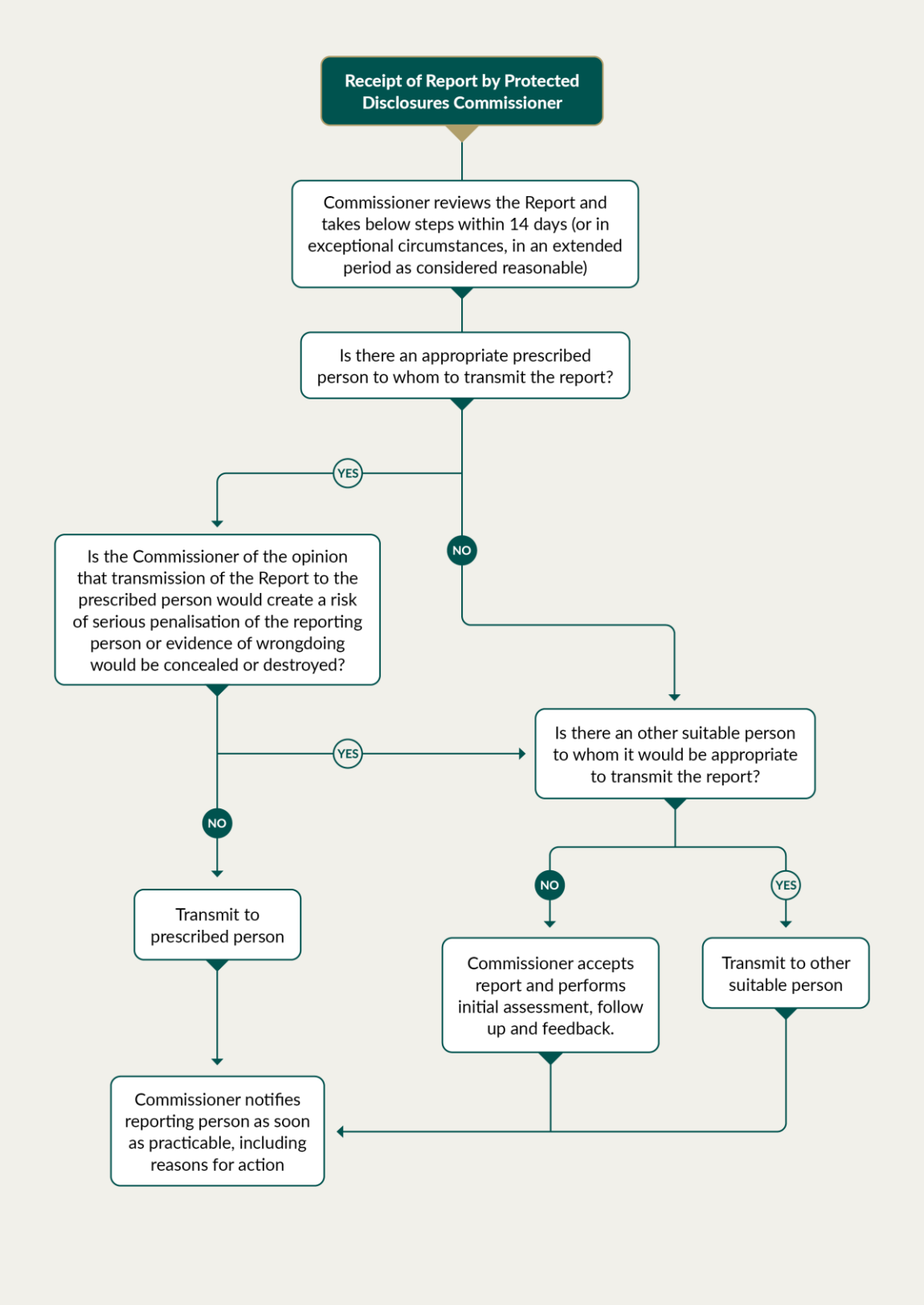

Figure 5: Protected Disclosures Commissioner reporting process

As set out in sections 8.5 and 8.6, above, the Commissioner can receive reports of wrongdoing:

- Directly from a worker, under section 7(1) of the Act;
- From a prescribed person, under section 7A(1)(b)(vi)(I)(B) of the Act; or
- From a Minister under section 8(3)(a) of the Act.

The Commissioner's primary duty in all of these cases is to transmit any reports received under the Act to the most appropriate prescribed person (or other suitable person, if a prescribed person cannot be identified) to follow up on the information reported. Only as a last resort (e.g. if an appropriate prescribed person or suitable person cannot be identified) should the Commissioner directly follow-up on a report.

An impartial designated person or persons must be appointed by the Commissioner.[28] This designated person must be responsible for: providing information on making a disclosure to the Commissioner; receiving and following up on reports made or transmitted to the Commissioner; maintaining communication with the reporting person; and, where necessary, requesting further information from and providing feedback to the reporting person. See Section 9.4 for further information on designated persons.

When the Commissioner receives a report, the Commissioner must, within 14 calendar days (or a longer period as deemed reasonable due to the nature and complexity of the report) identify the prescribed person or persons which the Commissioner considers most appropriate to follow-up on the matter reported[29] and transmit the report to them.[30]

In the alternative, the report can be transmitted to another suitable person, where the Commissioner considers there is no appropriate prescribed person; or where having regard to the nature of the wrongdoing concerned the Commissioner is of the opinion that the report should not be transmitted to the prescribed person due to the risk of serious penalisation against the reporting person or that evidence of the wrongdoing would be concealed or destroyed.[31] Suitable persons must be informed of their obligations under the Act when a report is transmitted to them.[32]

When transmitting a report, the Commissioner should inform the recipient of what section of the Act the report is being transmitted under. This is to assist in the annual reporting process (see section 14 of this Guidance).

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[28] Per sections 10B(5), 10C(8)(a) and 10D(8)(a) of the Act.

[29] Per sections 10C(1)(a)(i) and 10D(1)(b)(i)(I) of the Act.

[30] Per sections 10C(1)(b) and 10D(1)(b)(ii) of the Act.

[31] Per sections 10C(1)(a)(ii) and 10D(1)(b)(i)(II) of the Act.

[32] Per sections 10C(4) and 10D(4) of the Act.

The reporting person must be notified, as soon as practicable, of the transmission of the report and the reasons for doing so, as well of any extension to the 14 day period referred to above.[33]

The Commissioner will not follow-up on the allegations made in a report or assess whether it qualifies as a protected disclosure before it is sent to a prescribed person or other suitable person for follow-up. The transmission or acceptance by the Commissioner of a report does not mean that the report qualifies as a protected disclosure within the meaning of the Act.

Only where a prescribed person or other suitable person cannot be identified will the Commissioner accept the report and notify the reporting person.[34] Once the report has been accepted, the Commissioner must perform an initial assessment, feedback and follow-up.[35]

A person to whom a report is transmitted by the Commissioner may notify the Commissioner within 7 calendar days[36] of receipt that they are of the opinion the report does not come within their remit, and the reasons for this. The Commissioner may not accept this opinion; or accept this opinion and transmit the disclosure to another prescribed person or suitable person; or where no prescribed person or suitable person can be identified, accept the report and follow-up.[37] The Commissioner's decision in relation to the transmission of a report, following consideration of an objection, is final.[38]

The only basis for objecting to transmission is that the matter to which the report relates does not come within the remit (statutory or otherwise) of the recipient.[39] A recipient cannot object to transmission on the grounds that the report does not meet a requirement of the Act. This is a matter for the recipient to consider as part of its follow-up on the report.

Once the Commissioner has transmitted a report to the appropriate prescribed person or suitable person and no objection has been received or an objection has not been accepted, the Commissioner's role in the matter has concluded. The Commissioner has no powers to follow up with the persons to whom they transmit reports to regarding what action said person's take following transmission. Such persons, therefore, should, in the interests of preserving confidentiality, not include the Commissioner on any further follow-ups or updates on reports transmitted by the Commissioner unless such correspondence includes a new report of wrongdoing.

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[33] Per sections 10C(2) and (3) and 10D(2) and (3) of the Act.

[34] Per sections 10C(5) and 10D(5) of the Act.

[35] Per sections 10C(7) and 10D(7) of the Act.

[36] The date of transmission is considered to be the first of these 7 days (e.g. if a report is transmitted on 11 January, the Commissioner must receive the recipient's objection no later than 17 January).

[37] Per sections 10C(12) and 10D(12) of the Act.

[38] Per sections 10C(12)(b)(i) and 10D(12)(b)(i).

[39] Per sections 10C(12)(a) and 10D(12(a) of the Act.

8.8 Disclosure to institutions of the European Union

A worker may make a report to a relevant institution, body, office or agency of the European Union,[40] provided the worker reasonably believes:

(a) That the information they wish to report concerns breaches of EU law that falls within the scope of the Directive;[41] and

(b) That the information on breaches was true at the time of reporting.

This is a requirement under the Directive. Recital 69 of the Directive provides that, "*The Commission, as well as some bodies, offices and agencies of the Union, such as the European Anti-Fraud Office (OLAF), the European Maritime Safety Agency (EMSA), the European Aviation Safety Agency (EASA), the European Security and Markets Authority (ESMA) and the European Medicines Agency (EMA), have in place external reporting channels and procedures for receiving reports of breaches falling within the scope of this Directive, which mainly provide for confidentiality of the identity of the reporting persons. This Directive should not affect such external reporting channels and procedures, where they exist, but should ensure that persons reporting to institutions, bodies, offices or agencies of the Union benefit from common minimum standards of protection throughout the Union.*"

8.9 Disclosure to a legal adviser

The Act allows a protected disclosure to be 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).[42]

8.10 Disclosure to other third parties

The Procedures should confirm that it is preferable in most circumstances to disclose to the employer and, if that is not appropriate, to use one of the options set out in the sections above. The Procedures should explain that there are specific – and more onerous – conditions that must be met for a worker to be protected if they report to a person other than their employer, a responsible person, a prescribed person, the Commissioner, a legal adviser or a Minister.

To qualify for protection in this case, the worker must reasonably believe that the information disclosed in the report, and any allegation contained in it, is substantially true, and that at least one of the following conditions is met:

I. 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

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[40] Per section 7B of the Act.

[41] Refer to the definition of "breach" in section 3 of the Act and Article 2 of the Directive for further information as to what constitutes a breach in this context.

[42] Per section 6 of the Act.

no appropriate action was taken in response to the report within the specified feedback period; or

II. 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

III. 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

IV. 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.

8.11 Disclosure in the areas of law enforcement, security, defence, international relations and intelligence

The Act makes particular provision for making disclosures in the areas of law enforcement, security, defence, international relations and intelligence.[43] Detailed information pertaining to these particular provisions should be included in the Procedures of public bodies to which they are relevant.

WITHDRAWAL OF A PROTECTED DISCLOSURE

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 to such extent as may reasonably and lawfully be required for the purposes of the Act.[44]

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.

[43] Per Part 4 of the Act.

[44] Per sections 7A(2), 10B(9), 10C(9), 10D(9) and 10E(2) of the Act.

9. Establishing Reporting Channels

9.1 Legal requirements

9.1.1 INTERNAL REPORTING CHANNELS

Section 6(3) of the Act provides that employers must establish, maintain and operate internal channels and procedures for the making of reports and for follow-up of said reports. Section 6(4) of the Act provides that this applies to all public bodies regardless of the number of employees they have.

Section 14A(1)(f) of the Act provides that it is an offence not to establish internal reporting channels as required by the Act. Compliance with the Act in this regard will be monitored and enforced by the inspectorate of the Workplace Relations Commission.[45]

Section 6A of the Act sets out specific minimum requirements as to what must be included in the internal reporting procedures. Please refer to section 9.2 for further information.

9.1.2 EXTERNAL REPORTING CHANNELS

Section 7(2A) of the Act provides that prescribed persons and the Protected Disclosures Commissioner must establish, maintain and operate independent and autonomous external reporting channels and procedures for receiving and handling reports made to them by workers in the areas they are responsible for supervising or regulating. **These external reporting channels are separate from and in addition to the internal reporting channels the prescribed person's public body must establish for their own workers in accordance with section 6(3) of the Act**.

Section 7A of the Act sets out specific minimum requirements as to what prescribed persons must include in their external reporting procedures. Similarly, Section 10B(1) of the Act sets out specific minimum requirements for what the Protected Disclosures Commissioner must include in their external reporting procedures. Please refer to section 9.2 for further information.

9.2 Minimum requirements for channels

9.2.1 INTERNAL REPORTING CHANNELS

Internal reporting channels must be designed, established and operated in a secure manner that ensures the identity of the reporting person and any other third party mentioned is protected, and prevents access other than by designated persons.[46]

Procedures must provide for acknowledgment of reports; follow up by the designated person, to include an initial assessment and the taking of appropriate action; the provision of feedback to the

[45] Per section 14A(7) of the Act.

[46] Per section 6A(1)(a) of the Act.

reporting person; and the provision of clear and accessible information to workers on the reporting channels and procedure for making reports.[47]

The procedures must state whether reports can be made in writing or orally or both. It is a matter for each public body to set its own policy in this regard.[48]

Internal channels should be available to all workers of the public body concerned, and, as far as is possible, to other persons who acquire information on a relevant wrongdoing though their work-related activities.

9.2.2 EXTERNAL REPORTING CHANNELS

External reporting channels and procedures operated by prescribed persons must be independent and autonomous.[49] They must be designed, established and operated in a manner that ensures the completeness, integrity and confidentiality of the information concerned and prevents access to the information by persons other than designated persons and any other authorised members of staff; and allow durable storage of information to allow further investigations to be carried out.[50]

Procedures must provide for acknowledgment of reports; follow up by the designated person, to include an initial assessment and the taking of appropriate action; the provision of feedback to the reporting person; and informing the reporting person of the final outcome of any investigation triggered by the report.[51] If there is a breach of applicable EU law, the relevant EU body must be informed, if required by EU or Irish law.[52] Reports of serious relevant wrongdoing may be prioritised, if necessary and appropriate.[53]

Reports via external channels must be able to be made in writing and orally.[54]

9.3 Design of reporting channels

Internal and external reporting channels should be designed and operated in such a manner as to ensure that the confidentiality of the identity of the reporting person, and any other person concerned, as well as the information that has been disclosed, is protected.

Reporting channels are a dedicated means to allow disclosures be made by reporting persons to the public body, prescribed person or the Commissioner. They must be distinct and separate from other lines of communication to or within the public body, prescribed person or Commissioner.

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[47] Per section 6A(1) of the Act.

[48] Per section 6A(2) of the Act.

[49] Per section 7(2A) of the Act.

[50] Per section 7A(5) of the Act.

[51] Per section 7A(1) of the Act.

[52] Per section 7A(1)(g) of the Act.

[53] Per section 7A(3) of the Act.

[54] Per section 7A(6) of the Act.

There is a distinction between public bodies as employers and prescribed persons in respect of how disclosures may be made. Public bodies must enable internal reports to be made in writing or orally or both.[55] They are not required to enable both. Prescribed persons and the Commissioner must enable external reports to be made in writing and orally.[56]

On a practical level, at a minimum, these channels should consist of a dedicated email address for receiving written reports or a dedicated phone number/voicemail system for receiving oral reports or both, as appropriate. Other methods for receiving reports can include: online forms, mobile applications, postal addresses and internal mailboxes as well as in-person reporting. It is a matter for each public body and prescribed person to decide what is the most appropriate means of receiving reports, having regard to the requirements of the Act.

Due consideration should be given to the nature and distribution of the workforce and the workplace. Different types of reporting channels may be required depending on whether or not all workers are based at a single site or spread over multiple sites or whether the workers are primarily engaged in desk-based office work or other forms/places of work (e.g. a factory floor or warehouse, a hospital ward, outdoors etc.). The recent growth in remote working will also be a factor in these considerations. Consideration should also be given to what languages workers should be able to report in and what accommodations might be needed to facilitate workers with disabilities.

The channels should be designed so that the contents of any disclosure and any material arising from the report (e.g. as part of any follow-up action) are kept secure and confidential and are only available to the designated person or other members of their team or other appropriate persons, as required. Access to any email inbox, voicemail system, physical mailbox etc. used for receiving reports must be restricted solely to persons designated to receive and handle reports (see section 9.4). This may require separate data storage on IT systems with restricted access and logging of who has accessed what information and when. Any physical materials must also be stored securely (e.g. in a locked room and/or filing cabinet) with access restricted to designated staff, as required. Where a physical meeting is required with the reporting person, the meeting place used should ensure privacy and protection of the identity of the reporting person.

When a report which appears to be a protected disclosure is made orally, it should be recorded or documented in the form of minutes by the recipient. Where minutes are taken, the reporting person should be asked to confirm the information provided to avoid dispute at a later date in relation to the information disclosed. Please refer to section 9.6 for further information.

For prescribed persons and the Commissioner, where a report that would appear to fulfil the criteria of being a protected disclosure is received via a channel other than the dedicated external channel (e.g. via the organisation's main telephone line or made to a staff member carrying out an inspection of a premises), the recipient of the report must, as soon as is practicable, forward the report without modification to the designated person responsible for receiving and handling reports (see section 9.4.2, below).[57] Prescribed persons and the Commissioner should ensure that staff in public-facing

[55] Per section 6A(2) of the Act.

[56] Per section 7A(6) of the Act.

[57] Per sections 7A(8) and 10B(4) of the Act.

positions who may be likely to receive such reports (e.g. field-workers such as inspectors or auditors) are trained to recognise such reports and understand they must be forwarded to the relevant designated person.

A list of the details that it is recommended should be included in a report of a disclosure is to be found at Appendix A of this Guidance. A similar list should be included in any Procedures or a standard form (paper or online) based on this list should be developed and used.

OUTSOURCING OF INTERNAL REPORTING CHANNELS

Section 6A(9)(b) of the Act provides that internal reporting channels can be "*provided externally by a third party authorised in that behalf by an employer*". It is a matter for individual public bodies to decide if their reporting channels should be outsourced or not.

Regardless of whether the internal channel is operated in-house or by an external provider, it remains the statutory responsibility of the public body to ensure their internal reporting channel is designed, established and operated in a secure and confidential manner and handles all reports in accordance with the provisions of the Act.

9.4 Appointment of designated persons

9.4.1 INTERNAL REPORTING CHANNELS

An impartial person (or persons) must be designated by each public body to handle any reports received. This person is known as the "**designated person**", and must be competent to follow up on reports, carry out an initial assessment of the report, maintain communication with the reporting person, and request further information from, and provide feedback to, the reporting person.[58] This designation should be made in accordance with the standard policies and procedures that apply within the public body as regards the delegation or assignment of duties and responsibilities to staff.

The internal reporting channel should be sufficiently resourced to enable the organisation fulfil all of its obligations under the Act. However – depending on the size of the organisation and the number of reports it will need to handle – the designated person(s) may not be required to be a full-time role, and individuals can carry out the role as an addition to their day-to-day roles within the public body. Resourcing of the internal channel should be kept under regular review.

It is important that the designated person(s) has sufficient seniority, authority and autonomy within the organisation to be able to effectively follow-up on reports independently and impartially. This is a matter for individual public bodies to consider in the context of their own particular structures and resources. It is recommended, however, that the role of designated person be assigned to a person or persons in an area of the organisation responsible for internal corporate governance, compliance etc. Staff members in such functions will usually have the requisite independence and oversight function

[58] Per section 6A(1)(c) of the Act.

to allow receipt and follow-up of disclosures without being part of a larger internal reporting structure, which might give rise to conflicts of interest or other issues.

An alternative designated person or point of contact should also be provided should circumstances arise such that it is inappropriate that the primary designated person be involved in the process.

Specific training in the receipt, handling and follow-up of reports of disclosures, as well as the requirements of the Act, should be provided to designated persons.

9.4.2 EXTERNAL REPORTING CHANNELS

Similar to the requirements that apply to internal reporting channels, prescribed persons and the Commissioner must appoint a designated person or persons to handle reports received. This designation should be made in accordance with the standard policies and procedures that apply within the prescribed person (or the Commissioner) as regards the delegation or assignment of duties and responsibilities to staff.

The designated person(s) shall be responsible for: providing information to the public on how a person can make a report to the prescribed person (or the Commissioner); receiving and following up on reports made via the external reporting channels; and maintaining communication with the reporting person for the purposes of providing feedback and, where necessary, requesting further information from the reporting person.[59]

Prescribed persons are mainly senior office holders in public bodies, and the designated person(s), carrying out the role on behalf of a prescribed person, must be a member of the prescribed person's staff. It is a matter for individual prescribed persons to consider if the person(s) who are designated as responsible for handling reports should also be designated with responsibility for handling external reports.

The external reporting channel should be sufficiently resourced to enable the prescribed person or the Commissioner to fulfil their obligations under the Act. Where the prescribed person has a single dedicated regulatory and/or enforcement function, it is recommended that the designated person(s) be a suitably competent member of staff of this function. Larger organisations may have multiple regulatory or enforcement functions split over several functional units. In this case, consideration should be given to giving the designated person(s) a co-ordinating role, acting as a single point of contact for workers making reports who liaises and works with staff in the relevant functional areas of the organisation. Where this approach is taken, careful consideration must be given to how the identities of reporting persons should be kept confidential.

Specific training in the receipt, handling and follow-up of reports of disclosures, as well as the requirements of the Act, should be provided to designated persons. In the case of designated persons for prescribed persons and the Commissioner, such training is a legal requirement under the Act.[60]

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[59] Per sections 7A(7), 10B(5), 10C(8)(a) and 10D(8)(a) of the Act.

[60] Per sections 7A(9), 10B(6), 10C(8)(b) and 10D(8)(b) of the Act.

9.5 Oversight and coordination of information

Senior management in a public body will have statutory duties and fiduciary duties relating to oversight and control of the organisation. Senior management are also accountable within and outside the public body such as to the board of the public body, the relevant Minister, the Oireachtas and local government.

In order to fulfil these duties and accountability requirements, senior management require knowledge of any potential or actual issues that may have a material impact on the organisation, its operations, its finances, etc. Therefore senior management should be kept appraised of protected disclosures received by the public body. The level of detail needed to be provided may vary from case to case, however for a disclosure that raises serious issues for the public body, senior management may need to be provided with all details of the disclosure. Only where it is absolutely necessary should this information include the identity of the reporting person.

The Act allows the identity of the reporting person to be disclosed to other persons where necessary for follow-up of reports. Follow-up is defined as meaning any action taken, by the recipient of a report, or a person to whom the report is transmitted, to assess the accuracy of the information and, where relevant, to address the wrongdoing reported.[61] Therefore, follow-up includes the assessment and investigation of the report of a disclosure and actions taken to address the wrongdoing. Involvement of senior management will often be required to address issues raised, particularly where these are serious issues for the organisation.

In each public body there should be a point (or points) of contact for co-ordination of information and case management so that information on protected disclosures can be managed and collected in order, *inter alia*, to meet the body's obligations under section 22 of the Act to report annually and to maintain oversight of how protected disclosures are dealt with. The point (or points) of contact should be at an appropriate level.

Public bodies should put an appropriate case management system in place to record and track protected disclosures and for the purpose of fulfilling the annual reporting obligations under the Act (see section 14 of this Guidance). The case management system should ensure that there is effective monitoring of how many protected disclosures are being made; what investigation or other action is being taken; any penalisation of reporting persons and any steps taken to mitigate against penalisation; and whether the Procedures are effective at encouraging reporting persons to come forward. Access to the case management system should be restricted solely to persons designated to receive and handle reports as set out in section 9.4, above.

All reports assessed as protected disclosures, irrespective of whether they are being dealt with formally or informally, should be recorded and notified to the appropriate point of contact.

[61] Per the definition of "follow-up" at section 3(1) of the Act.

9.6 Record keeping, data protection and FOI

9.6.1 RECORD KEEPING

Requirements in regards to record keeping are set out in section 16C of the Act. Any person to whom a report is made or transmitted must keep a record of every report made to them, including anonymous reports.[62] Records management policies may need to be reviewed and updated to ensure that records related to protected disclosures are held and managed in a manner compatible with the requirements of the Act.

If a recorded telephone line or voice messaging system is used, a recording or transcript of the report may be kept, with the consent of the reporting person.[63] If the call is not recorded, minutes of the call may be made.[64] If a meeting takes place in 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.[65]

The reporting person should be given the opportunity to check, rectify and agree by way of signature the transcript or minutes of the call or meeting.[66]

For anonymous disclosures, the person receiving the report 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, should the person making the report be subsequently identified and penalised.[67] For example, this could include the details of the wrongdoing disclosed and the identity of other persons referred to in the disclosure.

Records should be retained for no longer than is necessary and proportionate to comply with the provisions of the Act or any other legislation.[68] Public bodies that are subject to the National Archives Act 1986 should consult with the National Archives as regards appropriate practices for the retention, disposal and archiving of records relating to protected disclosures.

Public bodies and prescribed persons should ensure that records relating to protected disclosures are ring-fenced within their IT systems and any electronic records management system operated by them. Access to records should be strictly limited to those who require access in accordance with the Procedures. Similarly if paper records are maintained, access to these should also be restricted.

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[62] Per section 16C(1) of the Act.

[63] Per section 16C(4) of the Act.

[64] Per section 16C(5) of the Act.

[65] Per section 16C(7) of the Act.

[66] Per sections 16C(6) and 16C(7) of the Act.

[67] Per section 16C(3)(a) of the Act.

[68] Per sections 16C(3)(b) and 16C(8) of the Act.

9.6.2 DATA PROTECTION

It can be expected that most, if not all, protected disclosures will involve the processing of personal data. At a minimum, this will likely include the personal details of the reporting person but might also include information regarding persons concerned or other third parties.

Section 16B(7) of the Act provides that all personal data shall be processed in accordance with applicable data protection law. This includes, *inter alia*, the General Data Protection Regulation (GDPR). The amended Act provides a general lawful basis for the collection and processing of such personal data. Note, however, that, in accordance with general data protection principles, section 16B(8) provides that any personal data that is manifestly not relevant to the handling of a specific report should not be collected or if collected accidentally should be deleted without undue delay.

Note that Section 16B(1) of the Act provides that, in certain circumstances, and where necessary and proportionate, the rights of data subjects under data protection law are restricted in respect of their personal data processed for the purposes of the Act, including receiving, dealing with or transmitting a report of a disclosure or follow-up on such a report.[69] The Procedures should include a notice setting out these restrictions.

The restrictions apply, among other situations, to the extent necessary, and for as long as is 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.

The restrictions also apply where it is necessary and proportionate: (a) to prevent the disclosure of information that might identify the reporting person, where such disclosure of identity would be contrary to the protections of the Act; or (b) where exercise of the right would prejudice the effective follow-up, including any investigation, of the relevant wrongdoing.

While the restrictions apply to a number of specific rights under GDPR, the most relevant right for public bodies is likely to be an individual's right to access their personal data on foot of a data subject access request. The restrictions may allow certain personal data of the individual to be withheld if they fall under the above objectives.

Data protection law is a complex area, and the above is a brief summary of the data protection provisions of the Act. Public bodies and prescribed persons should ensure any exercise of rights of a data subject under GDPR are dealt with appropriately and in accordance with data protection law. If a public body's Data Protection Officer is considering applying restrictions of data subject rights under the Act, the provisions of the Act should be considered prior to doing so.

Public bodies and prescribed persons should prevent access by unauthorised persons to personal data processed for the purposes of the Act and ensure it is only disclosed to authorised persons.

[69] As allowed under Article 23 of the GDPR.

9.6.3 FREEDOM OF INFORMATION

The Freedom of Information Act 2014 (the "**FOI Act**") has been amended by the Protected Disclosures (Amendment) Act 2022. As a result of this amendment, the FOI Act does not apply to a record relating to a report made under the Act, whether the report was made before or after the date of the passing of the Protected Disclosures (Amendment) Act 2022.[70] Records concerning a public body's general administration of its functions under the Act are subject to FOI, however.

The FOI Act also does not apply to the Office of the Protected Disclosures Commissioner, in the performance of the functions conferred on it by or under the Act, other than insofar as it relates to records concerning the general administration of those functions.[71]

[70] Per section 42(ja) of the Freedom of Information Act 2014.

[71] Per paragraph (an) of Part 1 of Schedule 1 of the Freedom of Information Act 2014.

10. Acknowledgement, Assessment and Follow-up

10.1 Acknowledgement

10.1.1 INTERNAL REPORTING CHANNELS

The public body must acknowledge, in writing, to the reporting person receipt of every report made though the internal reporting channel within 7 calendar days of its receipt.[72] The requirement to acknowledge within 7 days is a statutory maximum and there is nothing preventing a public body from setting a shorter timeframe for acknowledgement in their Procedures if they so wish.

10.1.2 EXTERNAL REPORTING CHANNELS

Prescribed persons and the Commissioner must acknowledge, in writing, to the reporting person receipt of the report within 7 calendar days of its receipt. There are two exceptions to this:

1. Where the reporting person has requested otherwise; or
2. The prescribed person or the Commissioner reasonably believes acknowledgement of the receipt would jeopardise the protection of the identity of the reporting person.[73]

The requirement to acknowledge within 7 days is a statutory maximum and there is nothing preventing a prescribed body or the Commissioner from setting a shorter timeframe for acknowledgement in their Procedures if they so wish.

10.1.3 INFORMATION TO BE PROVIDED IN ACKNOWLEDGEMENT

The Procedures for internal and external reporting should specify the information that should be included in the initial acknowledgement.

The acknowledgment should endeavour to set expectations early as to what will happen – and when – after the report is made and to set the boundaries for the reporting person's involvement with the follow-up process. In particular:

- The acknowledgement should provide further information about the protected disclosures process and enclose or link to the Procedures that will apply to the handling of the report.

- Information should be provided in relation to the protection of the identity of the reporting person (and the limits of that protection) and protection from penalisation.

- Information in relation to feedback should include the type of feedback that will be provided, as well as the type of feedback that will not be provided, and that the reporting person may request in writing further feedback at three month intervals. It should be made clear that personal

[72] Per section 6A(1)(b) of the Act.

[73] Per sections 7A(1)(a), 10B(3) and 10D(1)(a) of the Act.

information relating to another worker will not be provided, such as whether a disciplinary process has taken place and the outcome of any such process.

- The acknowledgement should signpost the reporting person to any advice or support services that may be available to them (e.g. the Transparency International Ireland helpline, any employee assistance services, their trade union, etc.). See also section 13.2 of this Guidance on supports.

10.2 Assessment

10.2.1 INTERNAL REPORTING CHANNELS

When a report of alleged wrongdoing is made through the internal reporting channel, an initial assessment, or screening process, must be undertaken.[74] This need not be solely carried out by the designated person, but can be delegated to another authorised person, as appropriate. This screening process should be referred to in the Procedures.

The initial assessment should involve an assessment of the report to seek to determine if there is *prima facie* evidence that a relevant wrongdoing may have occurred and if it should be treated as a protected disclosure, having regard to the provisions of the Act. If it is unclear whether the report qualifies as a protected disclosure, the designated person should 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 satisfied that the report is not a protected disclosure.

In many cases, it is likely that the assessment process will require the gathering of further information to assist in making a determination as to what, if any, further follow-up action may be required. This may involve making contact with the reporting person, in confidence, to seek additional information or to clarify certain points of their report. Making such contact at an early stage is also useful in reassuring the reporting person that their report is being acted upon without undue delay. This process may also involve clarifying or confirming that the report has been made in a work-related context.[75] If it is clear that the report has not been made in a work-related context and/or the reporting person is not a worker (as defined in the Act), the report can be referred to another, more appropriate, process.

It may be necessary, as part of the initial assessment, to differentiate between protected disclosures and complaints exclusively affecting the worker. In some cases the information provided may involve both a complaint exclusively affecting the worker and a protected disclosure. For instance, a worker may allege that there is some mistreatment of the worker and also allege that a colleague is defrauding the public body. The report should be assessed to determine the nature of the information disclosed and the procedure or procedures that is/are most appropriate to be used to investigate the individual elements of the allegation.

If, having assessed the report, it is deemed to relate solely to a complaint exclusively affecting the worker then the reporting person should be encouraged to utilise other processes (for example, the

[74] Per section 6A(1)(d)(i) of the Act.

[75] As defined in section 3(1) of the Act.

grievance or dignity at work policy) so that the complaint can be dealt with in an appropriate manner, and should be told that the report will not be considered under the protected disclosures procedure. If, having assessed the report, there is a mix of different issues (some involving a protected disclosure, some involving a complaint exclusively affecting the worker) then an appropriate process or processes should be applied to deal with each of the issues. The process to be applied may differ from case to case.

A single disclosure may be broken down into a series of separate allegations or parts, each of which may need to be followed up separately or approached differently, according to the circumstances.

If, after the initial assessment, the designated person (or delegate) determines that there is no *prima facie* evidence that a relevant wrongdoing may have occurred, then the matter can be closed (or referred to another internal process, as above), and the reporting person notified.[76]

If, after the initial assessment, the designated person (or delegate) determines that there is *prima facie* evidence that a relevant wrongdoing may have occurred, the designated person (or delegate) should take appropriate action to address the relevant wrongdoing.[77] This will normally involve a consideration of whether the alleged wrongdoing is something that can or should be investigated by the public body or not, and, if so, what steps should be taken as part of such an investigation.

It is important to note that 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.

If an investigation is required, the public body should consider the nature and extent of the investigation. This could consist of an informal approach for less serious wrongdoings or a detailed and extensive investigation of serious wrongdoings or an external investigation by another body.

The assessment process should also consider the extent to which the reporting person may be at risk of penalisation because of their report and what actions may need to be taken to mitigate this risk – see section 12.3 of this Guidance for more information.

10.2.2 EXTERNAL REPORTING CHANNELS

An initial assessment must also be carried out by a prescribed person[78] (or the Commissioner, if the Commissioner cannot identify a prescribed person or other suitable person to transmit the report to),[79] similar to that carried out by a public body dealing with a report made via internal reporting channels, as set out in section 10.2.1, above. In addition to the options available to a public body following an initial assessment, a number of other options are open to the prescribed person.

[76] Per section 6A(1)(d)(ii) of the Act.

[77] Per section 6A(1)(d)(iii) of the Act.

[78] Per section 7A(b)(i) of the Act.

[79] Per sections 10C(7)(a)(i) and 10D(7)(a)(ii) of the Act.

As well as seeking to determine whether or not a relevant wrongdoing may have occurred and if it should be treated as a protected disclosure, the initial assessment should also examine whether the report falls within the scope of the matters for which the prescribed person has responsibility.[80]

If the initial assessment shows that the report concerns matters not in the scope of the matters for which the prescribed person has responsibility, the report must be transmitted to the relevant prescribed person, or where there is no such other prescribed person, the Commissioner.[81] Any supplementary correspondence from the reporting person regarding the same matter should also be transmitted.

When transmitting a report from one prescribed person to another prescribed person, or to the Commissioner, the report should be transmitted in a secure manner, and in a way that will not compromise the security and confidentiality of the report. The person sending the report should ensure that it is sent to the designated person in the other prescribed person. Prescribed persons should consider creating a dedicated email address, accessible only by the designated person, to allow for such transmission. Alternatively, the report should be sent to the email address provided by that other prescribed person for making a report under the external reporting channels. When a report is transmitted, the person sending the report should also inform the recipient of the date the report was originally acknowledged. This is to ensure the recipient knows what the final date for the issuing of feedback is – see section 11.1 of this Guidance for detailed information on the timing of feedback.

If the initial assessment shows that there is a relevant wrongdoing but that it is clearly minor and does not require further follow up, the matter can be closed.[82] Where a prescribed person has a formal system for determining whether a report is minor (e.g. a risk assessment process), this should be referred to in the Procedures.

If the initial assessment shows that the report does not contain any meaningful new information about a relevant wrongdoing compared to a past report where the procedures have been concluded, unless new legal or factual circumstances justify a different follow up, the matter can be closed.[83]

The reporting person must be informed, as soon as practicable, if any of these outcomes arise and the reason for the decision.[84]

10.3 Follow-up

10.3.1 WHAT IS FOLLOW-UP?

Follow-up is defined in the Act as any action taken by the recipient of a report "*to assess the accuracy of the information contained in the report and, where relevant, to address the relevant wrongdoing*

[80] Per section 7A(1)(b)(i)(II) of the Act.

[81] Per section 7A(1)(b)(vi)(I) of the Act.

[82] Per sections 7A(1)(b)(iii)(I), 10C(7)(a)(iii)(I) and 10D(7)(a)(iii)(I) of the Act.

[83] Per sections 7A(1)(b)(iv)(I), 10C(7)(a)(iv)(I) and 10D(7)(a)(iv)(I) of the Act.

[84] Per respective provisions in respect of all of these outcomes in sections 7A, 10C and 10D of the Act.

reported, including, but not limited to, actions such as an internal inquiry, an investigation, prosecution, an action for recovery of funds or the closure of the procedure".[85]

The first step in follow-up is the initial assessment of the report to determine if there is *prima facie* evidence that it is possible that a relevant wrongdoing may have occurred, is occurring or may occur, as set out in the preceding section.

If such evidence is found, the next step as required by the Act is to fully determine the accuracy of the information reported and, to address the issue where a wrongdoing is found to have occurred. The definition of follow-up in the Act suggests a range of actions, such as an internal inquiry, an investigation, a prosecution or an action for recovery of funds. Any other action to determine the accuracy of a report and deal with any relevant wrongdoing identified may be considered to fall under the definition of follow-up.

The precise form of follow up that appropriate to each individual report will vary depending on the nature and content of the report. For example, while some cases may require substantial investigation to establish the facts, others may not merit such detailed follow-up as the facts are clear and uncontroversial. The follow-up action that should be taken should be proportionate to the nature, complexity and seriousness of the report.

While the Act suggests a range of possible follow-up actions, in many cases some form of formal or informal inquiry or investigation is likely to be the action taken following the initial assessment process. This section of the Guidance is intended to give a (non-exhaustive) overview of the general approach and key principals public bodies and prescribed persons should take to such inquiries or investigations.

10.3.2 GENERAL GUIDANCE FOR INTERNAL INVESTIGATIONS BY PUBLIC BODIES

This general guidance refers to internal inquiries or investigations by public bodies. Investigations by prescribed persons is addressed at section 10.3.6, below.

The incorporation of a detailed and prescriptive investigative process in the Procedures may impede the public body's ability to respond flexibly and in a responsive way to reports of wrongdoing. Specific timeframes as part of the investigation process may also create a difficulty as the nature of protected disclosures are such that they will range from being quite simple and relatively easy to assess or investigate to being quite complex and cumbersome, thus requiring a much more substantial period of time to carry out an investigation.

Public bodies should bear in mind that feedback is required to be provided to the reporting person within three months of acknowledgement of receipt of the report of a disclosure, and at three month intervals thereafter, if so requested.[86] Guidance on the provision of feedback is provided in detail in Section 11, however the requirement to provide feedback does not require a full investigation report

[85] Per the definition of "follow-up" in section 3(1) of the Act.

[86] Per sections 6A(1)(f) and 6A(1)(g) of the Act.

to be provided after three months. Feedback can consist of action taken or expected to be taken to address the wrongdoing reported.[87]

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 the subject of an allegation. The provisions of the amended Act reduce the cases in which the duty of confidentiality does not apply. Section 12.4 of this Guidance provides further information on the confidentiality requirements of the Act.

The designated person will need to consider such matters when determining whether a protected disclosure can be investigated and the nature of any investigation. Persons making a protected disclosure should be encouraged to frame it in terms of information that has come to their attention rather than seeking to draw conclusions about particular individuals or specific offences.

While an investigation under the Procedures is different to a grievance, dignity at work or disciplinary investigation, there are certain key themes and common features, and the nature of any investigation under the Procedures will be informed by the procedures that normally apply in the public body when other allegations are investigated.

An investigation process that goes beyond merely an information gathering exercise, and results in a finding of fact in relation to an individual(s), and may also result in an adverse finding against the individual(s), will require the application of the general principles of natural justice and fair procedures, as appropriate. The public body will need to be mindful that, if the investigation comes to the conclusion that some form of wrongdoing has occurred, the report that issues may need to be used in a subsequent disciplinary process. As a result, it should be able to withstand scrutiny as part of any disciplinary process and there should, where possible, be strong commonality of approach between such procedures.

Each public body should also ensure that any complaint of penalisation or breach of confidentiality is assessed and / or investigated as appropriate.

10.3.3 INFORMAL PROCESS FOR FOLLOWING-UP ON REPORTS

The public body may wish to provide for an informal process to address a disclosure if the relevant wrongdoing alleged in the disclosure is relatively straightforward, or is not very serious, or does not require consideration of the making of an adverse finding about any individual. The nature of an informal process is a matter to be determined by the public body itself having regard to circumstances including the nature of the alleged relevant wrongdoing. By way of example only, it may involve discussion with relevant persons and/or consideration of documents or information only and/or a broad review of issues without specific enquiry into the facts of a particular scenario.

The public body should consider whether or not the reporting person should be consulted to determine if they are open to addressing the contents of the report using a more informal process.

[87] Per the definition of "feedback" in section 3(1) of the Act.

If the public body provides for an informal process it should recognise in its procedures that there may be occasions where an informal process is commenced but the person(s) appointed to carry out that informal process identifies in the course of that process that the matter is more suitable for a formal investigation, in which case that should be reported to the designated person.

10.3.4 GENERAL PRINCIPLES FOR FORMAL INVESTIGATIONS

Public bodies should consider including in the Procedures a general framework for formal investigation procedures, with a set of guiding principles to ensure some consistency in terms of approach. These principles should include reference to the following:

(a) Terms of reference

Terms of Reference will not be necessary for all formal investigations, but for more complex or serious investigations, it will usually be necessary to draw up Terms of Reference. Public bodies should take care when drawing up Terms of Reference that the scope and conduct of the investigation is not unduly restricted by the contents of the Terms of Reference and that the investigator is not precluded from taking certain actions or examining further issues that may arise in the course of the investigation. For example, Terms of Reference should allow investigators to investigate additional issues that may come to light during the course of the investigation, not just those set out in the Terms of Reference. Terms of Reference should also give investigators latitude to interview any witnesses and to review any documentation that they deem relevant.

(b) Natural justice and fair procedures

Where an allegation is made against an individual (the "**Respondent**"), it is important to ensure that the Respondent is afforded appropriate protection. While the procedures for dealing with allegations against an individual will reflect the varying circumstances of public bodies, such procedures must comply with the general principles of natural justice and fair procedures, as appropriate.

Two of the key principles of natural justice and fair procedures are that the Respondent has the right to know the allegations against them and that the Respondent has the right to a fair and impartial hearing.

In many cases, the Respondent's right to fair procedures may include a right to challenge the evidence against him/her. This right will need to be balanced against rights contained in the Act, such as the reporting person's right to have their identity protected. It may not always be necessary under fair procedures for the Respondent to question or challenge the reporting person directly, for example where the information has been independently verified by way of documentary evidence or otherwise.

There are very limited cases where the duty of confidentiality does not apply permitting the disclosure of the identity of the reporting person to a Respondent. This may make it difficult to allow Respondents to challenge the evidence and may affect the application of natural justice and fair procedures.

Where the identity of the reporting person cannot be disclosed to the Respondent, it may be possible for the Respondent to pose questions and challenge the evidence by way of an intermediary (for example, the questions are put in writing via a third person/the investigator, who then puts these separately to the reporting person, and informs the Respondent of the reporting person's response).

Difficulties will also arise where a protected disclosure is made anonymously. In this case, for example, it may not be possible to take further evidence from the reporting person, and for the Respondent to challenge the person making the report. On the other hand, the only information available from the reporting person will be the contents of the disclosure.

In either case, whether the identity of the reporting person is known or is anonymous, the Respondent should be permitted to address the contents of the disclosure, and also to address any evidence or witness statements gathered as part of the investigation.

(c) Legal representation

In general, the Respondent's right to representation should be limited to a co-worker or trade union representative. While an individual is entitled to obtain their own legal advice, there is no automatic right to legal representation at the investigation meetings themselves. In addition, the Respondent has no right to have legal costs paid by the public body.

This applies equally to legal representation and payment of legal costs for the reporting person.

A right to legal representation will only arise in exceptional circumstances. The investigator should consider whether failure to allow legal representation is likely to imperil a fair hearing or a fair result, taking into account the general circumstances of the case including:

I. the seriousness of the charge and of the potential penalty;

II. whether any points of law are likely to arise;

III. the capacity of the Respondent to present their own case and whether the Respondent is suffering from any condition that might affect their ability to do so;

IV. whether there is any procedural difficulty involved in the case;

V. the formality of the investigation meeting (e.g. if there will be witnesses attending and if it will be necessary to challenge the evidence by putting information to the witnesses, and whether the Respondent would be capable of doing this without legal representation);

VI. the need for reasonable speed in conducting the investigation; and

VII. the general need for fairness as between the parties.

(d) Right to review

Where an investigation has made an adverse finding against the Respondent, such that it gives rise to a disciplinary process or further investigations or processes against the Respondent then a right to review the outcome of the investigation should be provided for. Please refer to section 10.4 of this Guidance for further information.

10.3.5 ALLEGATIONS OF WRONGDOING BY THE HEAD OF AN ORGANISATION

Public bodies must have, as a part of their Procedures, a protocol for following up on reports when the assessment process finds at first instance there is *prima facie* evidence of potential wrongdoing

by the Head of the body (i.e. CEO, Secretary General or equivalent). This protocol should consider, having regard to the requirements of the Act:

- How the follow-up procedure should be conducted so as to ensure its integrity and independence; and
- To whom the persons carrying out the follow-up procedure should report and seek direction or any further supervision as necessary.

The precise nature of this protocol is a matter for each body concerned and should have regard to the statutory framework in which the body operates and the lines of accountability – both internal and external – within which the body operates. Bodies may need to seek legal advice in this regard in developing their protocols.

10.3.6 INVESTIGATIONS BY PRESCRIBED PERSONS

Different considerations apply for prescribed persons in relation to investigations.

Prescribed persons are likely be in a position where the protected disclosure they are investigating involves individuals who are not employees of the prescribed person but rather individuals and organisations in the sector the prescribed person is responsible for regulating or supervising. In this case, prescribed persons will need to rely on the statutory powers given to them under legislation in order to carry out effective follow-up and investigation of the disclosures.[88]

The prescribed person is permitted to prioritise reports of disclosures of serious relevant wrongdoing, if necessary and appropriate, having regard to the number of reports received by them.[89] It should be noted that timelines for the provision of feedback remain the same for the reports which have not been prioritised.

Where a report of a disclosure concerns a breach of EU law, as provided for in the Act, the prescribed persons must send the information to the relevant EU bodies as soon as practicable, where this is provided for under EU or Irish law.[90] For example, under Article 36 of EU Regulation 1828/2006, public authorities have an obligation to report all major cases of irregularities (defined as cases involving more than €10,000) involving EU funds to OLAF, the EU's anti-fraud office.

10.3.7 INVESTIGATIONS BY THE COMMISSIONER

Section 10F of the Protected Disclosures Act sets out the powers the Commissioner may choose to exercise in the event that direct follow-up of a report made or transmitted to the Commissioner is necessary.

[88] Per section 7A(1)(v) of the Act.

[89] Per section 7A(3) of the Act.

[90] Per section 7A(1)(g) of the Act.

10.4 Review

10.4.1 INTERNAL REPORTING CHANNELS

Internal Procedures should allow for a system of review of a decision or process taken by a public body in relation to:

I. A decision, following assessment, to close the procedure or refer the matter to another procedure, if requested by the reporting person;

II. 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;

III. The conduct or outcome of any investigation into a complaint of penalisation, if requested by any affected party; and

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

The system of review should provide for the following:

- Details of how a person ("the applicant") can request a review and to whom they should apply to for a review;
- The time period within which an application for review can be made;
- The applicant should be required to set out the reason(s) they are seeking a review. A request for a review should be based on objectively reasonable grounds;
- The review should be considered by a person not involved in the original process under review. Consideration may have to be given to appointing a person from outside the organisation to conduct the review in this regard;
- The review should be carried out by a person of at least equivalent – and preferably more senior – level of seniority as the person who carried out the original process;
- The role of the reviewer should not be to re-investigate the matter in question but to address the specific issues the applicant feels have received insufficient consideration. The reviewer should, therefore, consider:
    - 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, the public body should then consider what further action(s) may or may not need to be taken in response to said findings; and

- The outcome of the review should be final and there should be no entitlement to further reviews of the same issue.

10.4.2 EXTERNAL REPORTING CHANNELS

The extent to which a decision or process taken by a prescribed person can be subject to review may depend on the statutory powers of the prescribed person. It is, therefore, a matter for each prescribed person to consider what is appropriate in terms of a system of review, having due regard to the statutory framework they operate in. Prescribed persons should endeavour, where possible, to provide for a system of review into the conduct or outcome of any follow-up actions taken on foot of the receipt of a report and any decision to disclose the identity of a reporting person or a person concerned.

11. Feedback

The purpose of the provision of feedback is that the reporting person is kept informed on the process and actions arising from the report made by them. The provision of regular feedback will help to assure the reporting person that their report has been taken seriously and that the issues raised are being addressed. This will also lessen the likelihood that the reporting person will make a disclosure using another channel. The failure of a public body or prescribed person to provide feedback on a report is grounds for a reporting person to make a disclosure to the relevant Minister or to make a disclosure to another third party, including making a public disclosure.

11.1 Timing of Feedback

11.1.1 INTERNAL REPORTING CHANNELS

Feedback is required to be provided to the reporting person within three months of acknowledgement of receipt of the report of a disclosure or if no acknowledgement is sent within three months of receipt of the report.[91] However, there is nothing preventing the provision of feedback earlier than this and it is recommended that public bodies provide feedback sooner than three months if the circumstances allow.

Where the reporting person requests in writing that they wish to receive further feedback after the initial three month period, then the public body must do so at intervals of three months until the procedure relating to the report is closed.[92] Notwithstanding this requirement of the Act, a public body may choose to provide for the provision of further feedback (even if not explicitly requested by the reporting person) at regular intervals as part of its Procedures. Note that the interval for such further feedback should not be greater than the three months provided for under the Act.

Public bodies should also note that if a report was made by an employee of the public body prior to the commencement of the Protected Disclosures (Amendment) Act 2022 on 1 January 2023, and the report is still being considered in accordance with the public body's previously established procedures, then the reporting person may request in writing that feedback be provided. The public body has three months to provide information on any actions taken or to be taken by that public body in relation to the report.[93]

11.1.2 EXTERNAL REPORTING CHANNELS

For prescribed persons and the Commissioner, the maximum time to provide feedback can be extended from three months up to six months after acknowledgement of the report, where it is

[91] Per section 6A(10(e) of the Act.

[92] Per section 6A(1)(f) of the Act.

[93] Per section 6(12) of the Act.

justified due to the particular complexity of the report concerned.[94] The reporting person must be informed of the decision to extend the time from three months to six months as soon as practicable.

Where a report that has been made directly to the Commissioner is transmitted by the Commissioner to a prescribed person or a report is transmitted by a prescribed person to another prescribed person (or the Commissioner), the three month or six month timeframe starts from the date the report was first acknowledged **not** the date of transmission.[95]

Where a report has been made to a Minister and transmitted to the Commissioner in accordance with section 8(3) of the Act, the rules regarding timing are different. If the Commissioner, having identified a prescribed person or other suitable person to follow-up on the report, transmits the report to said person, the three month or six month timeframe starts from the date said person acknowledged the report.[96] Where the Commissioner, having been unable to identify a prescribed person or other suitable person, follows-up on the report directly, the three or six month timeframe starts from the date the Commissioner acknowledged the report.[97]

If the reporting person has already made a report of the same information via another channel (e.g. they have reported to their employer via internal channels), this has no bearing on the timing for giving feedback.

EXAMPLES – TIMING OF FEEDBACK WHEN REPORTS ARE TRANSMITTED BETWEEN BODIES

EXAMPLE 1: A worker (the reporting person) makes a report to Person A (a prescribed person) on 1 March. Person A issues an acknowledgement to the reporting person on 8 March. Following assessment of the report, Person A determines that the matter reported does not fall within the scope of matters for which Person A has been prescribed and that that matter should be dealt with by Person B (also a prescribed person). Person A transmits the report to Person B on 22 March and informs the reporting person of the transmission the same day. Person B issues an acknowledgement to the reporting person on 29 March. As 8 March is the "date of original acknowledgment" as specified in the Act,[98] Person B must give their feedback to the reporting person no later than 8 June. If Person B decides to extend the feedback period to 6 months, Person B must notify the reporting person no later than 8 June and must give their feedback no later than 8 September.

EXAMPLE 2: A worker (the reporting person) makes a report to the Commissioner on 1 May. The Commissioner issues an acknowledgment to the reporting person on 8 May. Following assessment of the report, the Commissioner transmits the report to Person A (a prescribed person) on 20 May and notifies the reporting person of the transmission the same day. Person A issues an acknowledgement to the reporting person on 27 May. As 8 May is the "date of original acknowledgement" as specified

[94] Per sections 7A(1)(c), 10C(7)(b) and 10D(7)(b) of the Act.

[95] Per sections 7A(14) and 10C(15) of the Act.

[96] Per section 10D(15) of the Act.

[97] Per section 10D(7)(b) of the Act.

[98] As specified in section 7A(14) of the Act.

in the Act,[99] Person A must give their feedback to the reporting person no later than 8 August. If Person A decides to extend the feedback period to 6 months, Person A must notify the reporting person no later than 8 August and must give their feedback no later than 8 November.

EXAMPLE 3: A worker (the reporting person) makes a report a relevant Minister on 1 February. The Minister transmits the report to the Commissioner on 6 February. The Commissioner acknowledges the report on 12 February. The Commissioner transmits the report to Person A (a prescribed person) on 20 February and notifies the reporting person of the transmission the same day. Person A acknowledges the report on 27 February. In this case, 27 February is the "date of original acknowledgement" as specified in the Act.[100] Person A must give their feedback to the reporting person no later than 27 May. If Person A decides to extend the feedback period to 6 months, Person A must notify the reporting person no later than 27 May and must give their feedback no later than 27 August.

Where the reporting person requests in writing that they wish to receive further feedback after the initial three month (or six month) period, then the prescribed person must do so at intervals of three months until the procedure relating to the report is closed.[101] Notwithstanding this requirement of the Act, a prescribed person (or the Commissioner) may choose to provide for the provision of further feedback (even if not explicitly requested by the reporting person) at regular intervals as part of its Procedures. Note that the interval for such further feedback should not be greater than the three months provided for under the Act.

11.2 Content of Feedback

The Act defines feedback as the provision to the reporting person of information on the action **envisaged or taken** as follow-up and the **reasons** for such follow-up.[102]

Follow-up is defined as meaning any action taken, by the recipient of a report, or a person to whom the report is transmitted, to assess the accuracy of the information and, where relevant, to address the wrongdoing reported.[103] Therefore, follow-up includes the assessment and investigation of the report of a disclosure and actions taken to address the wrongdoing.

The overriding requirement when providing feedback is that no information is communicated that could prejudice the outcome of the investigation or any action that ensues (e.g. disciplinary, or other legal action, including prosecution) for example, by undermining the right to fair procedures enjoyed by the person against whom a report or allegation is made.

The extent of the feedback will depend on the report itself. If there is no relevant wrongdoing identified, this can be communicated in the feedback. If an alleged relevant wrongdoing is identified,

[99] Per section 10C(15) of the Act.

[100] Per section 10D(15) of the Act.

[101] Per sections 7A(1)(e), 10C(7)(d) and 10D(7)(d) of the Act.

[102] Per the definition of "feedback" at section 3(1) of the Act.

[103] Per the definition of "follow-up" at section 3(1) of the Act.

this can be noted in the feedback, as well as identifying actions that have been taken, or are intended to be taken, to address the wrongdoing, and the reasons for these actions.

By way of example, actions may include strengthening processes or procedures where a weakness has been highlighted as a result of a report; providing additional training to personnel; upgrading or replacing equipment; improving cyber security measures, etc.

Procedures should outline the requirement to provide feedback, and what this entails, while making clear the limits to such feedback in order to manage the expectations of reporting persons. Procedures should state that any feedback given is provided in confidence as part of the reporting process and the process of the public body/prescribed person addressing the report. The feedback should not be disclosed further by the reporting person, other than to their legal advisor or trade union representative, or unless the information forms part of a further protected disclosure being made via another channel.

There is no obligation to inform the reporting person of the commencement, or progress, or outcome, of any disciplinary process involving another worker which may arise on foot of an investigation occasioned by a protected disclosure. In general, such information is confidential between the employer and the person who is the subject of a disciplinary process. In such a situation, a reporting person should be informed that appropriate action has been taken but is not generally entitled to know what that action was or that is was disciplinary action.

Care should be taken to ensure that any feedback provided complies with data protection legislation and does not breach the data protection rights of any persons involved. Similarly, the requirement to provide feedback does not override any statutory obligations that might apply to a public body or a prescribed person as regards confidentiality and secrecy.

Apart from the requirement under the Act to provide feedback, in the absence of appropriate feedback there is a risk that a worker will perceive that the report of a disclosure is not being dealt with adequately, with sufficient speed, or at all. Apart from the potential adverse impact on the credibility of the public body's protected disclosures procedure, such a situation increases the possibility that the worker will raise the issue again, this time outside of the public body.

If the public body does not take action that might be reasonably expected to be taken, a Court or Adjudication Officer may consider this when determining if it was reasonable for that worker to make a report in respect of the matter outside of the organisation. This is especially so as the Act requires diligent follow-up to be carried out by the designated person.

11.3 Communication of final outcome

Prescribed persons and the Commissioner are required to communicate in writing to the reporting person the final outcome of any investigations triggered by the report of the disclosure, subject to

legal restrictions applying concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation.[104]

This does not require the provision of the full investigation report; the Act does not give the reporting person any entitlement to see such reports. The outcome of the investigation should be provided, subject to the above restrictions.

Although this is not a legal requirement applying to public bodies in respect of reports received through internal channels, it is considered good practice to inform the reporting person of the final outcome of the process, in line with the practice outlined above.

[104] Per sections 7A(1)(f), 10C(7)(e) and 10D(7)(e) of the Act.

12. Protections under the Act

The Act provides for certain protections for reporting persons. These include protection against penalisation for having made a protected disclosure and keeping their identity confidential, with certain exceptions. The Act also provides that penalisation and breaching of the confidentiality provisions are criminal offences, among other offences in the Act. There are also protections against civil and criminal liability for the reporting of information necessary for the purpose of making a protected disclosure.

12.1 Protection against penalisation

The Act provides for specific remedies for workers who are penalised for making a protected disclosure.

The definition of "penalisation" in section 3(1) of the Act is very comprehensive and this should be included in the Procedures. Penalisation means any direct or indirect act or omission occurring in a work-related context, due to the making of a report, and which causes (or may cause) an unjustified detriment to a worker.

The Act and this Guidance set out wider examples of what may constitute penalisation than were given when the Act was first introduced. This wider, non-exhaustive, list of examples consists of:

- suspension, lay-off or dismissal,
- demotion, loss of opportunity for promotion, or withholding of 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, harassment or ostracism,
- discrimination, disadvantage or 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 permanent employment;
- 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;
- cancellation of a licence or permit, and
- psychiatric or medical referrals.

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

It is important to note that 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.

An employer also may not cause or permit any other person to penalise or threaten penalisation against a reporting person. Therefore, any claim of penalisation in the Workplace Relations Commission, or Circuit Court injunction proceedings regarding penalisation, will be brought against the employer rather than the individual employee's responsible.

If a person causes detriment to another person because the other person (or a third person) made a protected disclosure, the person to whom the detriment is caused may bring a civil claim in the Courts against the person who caused the detriment.[105] This may include against individual employees. Detriment consists of any of the acts or omissions that are listed above as examples of penalisation.[106]

In claims for penalisation before the Workplace Relations Commission, 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.[107] This reverses the normal burden of proof under the Act prior to amendment, where the person alleging penalisation was required to prove that the penalisation was for having made the disclosure. This reversal of the burden of proof also applies to civil claims for damages taken under section 13 of the Act.[108]

12.2 Protection from civil and criminal liability

The following protections from civil and criminal liability should be explained in the Procedures:

12.2.1 CIVIL LIABILITY

Section 14 of the Act provides that – with the exception of defamation – civil legal action cannot be taken against a worker for making a protected disclosure. Workers can be sued for defamation but are entitled to a defence of "qualified privilege". This means that it should be very difficult for a defamation case against a worker to succeed if the worker can show they made a protected disclosure in accordance with the Act and did not act maliciously. There is no other basis under which a worker can be sued if they have made a protected disclosure in accordance with the Act – e.g. for breach of confidentiality.

[105] Per section 13(1) of the Act.

[106] Per section 13(3) of the Act.

[107] Per section 6(6) of the Unfair Dismissals Act 1977 and section 12(7C) of the Act.

[108] Per section 13(2B) of the Act.

12.2.2 CRIMINAL LIABILITY

Section 15 of the Act provides that if a worker is prosecuted for disclosing information that is prohibited or restricted (e.g. under the Official Secrets Act 1963), it is a defence for the worker to show that they reasonably believed they were making a protected disclosure at the time the alleged offence occurred.

12.2.3 NON-RESTRICTION OF RIGHTS

Section 23 of the Act provides that it is not permitted to have clauses in agreements that prohibit or restrict the making of protected disclosures, exclude or limit the operation of any provision of the Act, preclude a person from bringing any proceedings under, or by virtue of, the Act and/or preclude a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.

12.3 Preventing and dealing with penalisation

Public bodies should be proactive in their approach to protecting reporting persons from penalisation. This should involve specific actions – such as having policies and procedures for dealing with penalisation – alongside measures that ensure the body's organisational culture supports reporting persons and does not tolerate penalisation. Ideally, the organisational culture and systems the body has in place should prevent penalisation from occurring. Protection of the reporting person should begin as soon as their report is received and continue not only throughout the assessment and follow-up process but also following the closure of the report.

In practical terms, this means:

1. Having appropriate policies and procedures for dealing with penalisation.

The Procedures should include a clear statement that the organisation will not tolerate any form of penalisation or threat of penalisation against a worker who has made a protected disclosure (or any person connected with the reporting person). This statement should include a commitment that the organisation will take appropriate action – including disciplinary action, if required – against any worker who penalises a reporting person.

The Procedures should also set out clearly how and to whom a complaint of penalisation should be made and the process by which such complaints will be handled. Complaints of penalisation should be treated separately to the actual report itself. Such complaints can be handled by the HR function of the public body, unless this is inappropriate in the circumstances. Public bodies should review their HR policies to ensure that they are fit for purpose to handle penalisation complaints, particularly as regards the requirement to protect the identity of the discloser. Such HR policies should be amended as necessary to ensure they are aligned with the public body's protected disclosures policy. If mediation is provided for as part of the public body's existing HR processes, then the use of mediation as part of a response to a complaint of penalisation may also be considered, where appropriate.

The Procedures should provide information in relation to the external remedies available to workers who believe they have been penalised for making a protected disclosure. These include a claim before the Workplace Relations Commission and a claim for injunctive relief in the Circuit Court. The relevant time limits that apply for bringing a penalisation claim to the Workplace Relations Commission (within

6 months of the penalisation)[109] and the Circuit Court (within 21 days of last instance of penalisation)[110] should be set out.

2. Setting the tone from the top and throughout the organisation.

Senior management and the board (where one exists) of the organisation have a key role to play in ensuring that policies and procedures for dealing with penalisation are followed through and the organisation upholds its promise to its workers not to tolerate penalisation. Senior management and the board should exemplify the behaviour they want to see from all workers in the organisation. This should include regular communication to encourage workers to raise concerns and reassure them that they will be protected from penalisation. The benefits for the public body and its employees resulting from the making of protected disclosures should also be emphasised. If possible, and with the consent of the reporting person(s) involved, practical examples of occasions where protected disclosures have prevented or stopped harm to the public interest or the organisation should be highlighted and the role of reporting persons acknowledged. See also section 6.1 of this Guidance on the role of senior management and the board in respect of the Procedures.

3. Training

Training and awareness on protected disclosures and on the Procedures should be provided to all employees, and regularly refreshed. See section 13.1 of this Guidance for further details.

4. Ongoing risk assessment and monitoring of reporting persons

The process of assessing a report following receipt (per section 10.2 of this Guidance) should also include a risk assessment of the potential exposure of the reporting person to penalisation. This process should be carried out in consultation with the reporting person. Factors that the risk assessment should take into account include:

- Whether the reporting person is concerned/anxious about penalisation;
- The nature of the wrongdoing alleged, such as the seriousness/nature of the allegations, the seniority or status of alleged wrongdoers, who will be impacted by any follow-up actions, etc.
- Specific vulnerabilities of the reporting person, such as their employment status (e.g. if they are on probation or on an agency contract etc.), protected characteristics,[111] immigration status, etc.;
- Past history of the reporting person, such as previous issues the reporting person has had in the organisation, such as grievances or disciplinary action as well as previous protected disclosures;
- Past history of handling (or mishandling) of protected disclosures and/or penalisation complaints in the organisation;
- The degree to which it is possible to protect the reporting person's identity, having regard to the nature and subject of the allegations reported; and

[109] Per sections 8(2) of the Unfair Dismissals Act 1977 and section 41(7) of the Workplace Relations Act 2015.

[110] Per section 12(7A) of the Act and paragraph (2) of Schedule 1 of the Act.

[111] Gender, civil status, family status, age, disability, sexual orientation, race, religion and membership of the Traveller community, as set out in section 3(2) of the Equal Status Act 2000.

- Any issues identified by the reporting person (e.g. threats made against them or specific types of penalisation they are concerned about) and any suggestions or requests the reporting person might have to assist in their protection.

The risk assessment should inform any plans or contingencies for dealing with penalisation against the reporting person if it arises. These plans should be discussed with the reporting person so that a measure intended to protect them is not perceived by the reporting person as an act of penalisation in itself (e.g. reassigning the reporting person to take them out of harm's way). The risk assessment should be reviewed at periodic intervals and updated where required, particularly if the follow-up progresses to a stage where the risk of penalisation becomes more pronounced (e.g. the opening of a formal investigation).

It is also essential to continuously monitor whether any of the risk factors identified have arisen. Periodic contact with the reporting person to inquire as regards whether any issues or concerns have arisen is recommended. If the reporting person's line manager is aware of them having made a protected disclosure as part of the process to date, the line manager should also be made aware that the worker may be at risk of penalisation. However, the reporting person's identity should not be disclosed to the line manager if this is not already known, without the reporting person's consent. Another mechanism is to monitor any grievances, disciplinary actions or performance reviews of the reporting person (with their consent) and ensure that any such actions are not carried out by anyone involved in the concerns raised by the reporting person.

Such monitoring should continue following the completion of follow-up and the closure of the report. Penalisation does not always occur immediately after a report has been made and may not arise for months or even years after the event.

5. Protecting the identity of the reporting person

One of the easiest ways to protect a reporting person from penalisation is to ensure their identity is kept confidential and shared strictly on a need-to-know basis. The Act requires that reporting persons' identities are protected to the greatest extent possible. See section 12.4 of this Guidance for further details.

6. Promptly addressing complaints of penalisation

It is important that any complaint of penalisation is dealt with promptly by the employer, so that whatever detriment the reporting person has allegedly suffered ceases as soon as possible (where their complaint is upheld) and to ensure the reporting person (and the workforce generally) continue to have faith in the reporting process and the system of protection. In addition, a delay runs the risk of the reporting person making a complaint to the Workplace Relations Commission while the internal process is still underway, if the statutory deadline to complain to the Workplace Relations Commission or to make an application for interim relief at the Circuit Court is about to expire.

12.4 Confidentiality and protection of identity

The Procedures should confirm that the Act imposes an obligation to protect the identity of the reporting person and set out the extent of that obligation.[112]

Prescribed persons and the Commissioner are 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**").[113]

It is important that the Procedures set out the measures that will be taken to protect the identities of reporting persons and persons concerned. The measures should address such matters as document security, IT, digital and manual filing in the context of fulfilling the confidentiality obligation in the individual public body and within its systems.

12.4.1 PROTECTING THE IDENTITY OF THE REPORTING PERSON

The Procedures should set out that the designated person, any other person in the public body who receives a report, or anyone else to whom a report is shared with to allow them to carry out their functions in relation to the report, cannot 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.

However, this does not include people who the designated person reasonably considers it may be necessary to share the identity with 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 or investigating the report, and also, for example, another staff member who may have the necessary technical expertise to assist with the investigation of the report.[114] The Procedures should make clear that such other persons also cannot disclose the identity of the reporting person.

Notwithstanding the above, the designated person should always ensure that the identity of the reporting person is only ever shared on a "need to know" basis and only where it is necessary to carry out proper follow-up of a report. Where action is to be taken following a protected disclosure, it is recommended that a process is put in place for consulting with the reporting person and, where possible, for gaining the informed consent of the reporting person, prior to any action being taken that could identify them. This may include when reports are being referred by the public body to an external party.

It should be noted however that section 16(2) of the Act allows the identity of the reporting person to be disclosed in certain prescribed circumstances even where the reporting person does not consent to their identity being disclosed. The Procedures should, therefore, include an assurance that the

[112] Per section 16 of the Act.

[113] Per section 16A of the Act.

[114] Per section 16(1) of the Act.

identity of the reporting person will be protected in accordance with the Act, with the exception of a number of specific cases.

Apart from the situation described above relating to persons involved in the follow-up or investigation of a report, these specific cases are where:

I. The person to whom the disclosure was made or transmitted shows that they took all reasonable steps to avoid such disclosure;[115]

NOTE: This relates to a situation where all reasonable steps were taken to avoid disclosure of the identity, but the identity has been revealed in some manner, for example through an unforeseeable error or other unavoidable occurrence.

II. 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;[116]

III. Where the disclosure is otherwise required by law;[117] or

IV. 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.[118]

NOTE: 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 II or IV above, section 16(3) of the Act requires that the reporting person should 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;[119]

II. The prevention of serious risk to the security of the State, public health, public safety or the environment;[120] or

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[115] Per section 16(2)(b)(i) of the Act.

[116] Per section 16(2)(b)(ii) of the Act.

[117] Per section 16(2)(c) of the Act.

[118] Per section 16(2)(a) of the Act.

[119] Per section 16(3)(a)(i) of the Act.

[120] Per section 16(3)(a)(ii) of the Act.

III. The prevention of crime or prosecution of a criminal offence.[121]

The reporting person should also be informed of the applicable internal review process, which may be invoked by the reporting person in respect of this decision. (See also section 10.4 of this Guidance).

The Procedures should also provide for workers who are concerned that their identity is not being protected to notify their employer in an appropriate manner (such as HR or the manager of the designated person); a commitment to assess/investigate such notifications; and a commitment to take appropriate action where necessary.

The Procedures should also note that any attempt to identify the reporting person should not be made by persons within the public body to whom the identity has not been revealed as part of the receipt and follow-up of the report of a disclosure. If such attempts are made, whether successful or not, the Procedures should make it clear that this will be dealt with under the public body's disciplinary process.

If a complaint is made of penalisation contrary to the Act, then that complaint will be dealt with, having regard to the continued obligation to protect the identity of the reporting person under the Act.

12.4.2 PROTECTING THE IDENTITY OF PERSONS CONCERNED

Internal reporting channels must be designed in such a way so as to protect not only the confidentiality of the identity of the reporting person but also any third party mentioned in a report.[122] This requirement therefore extends to any persons concerned named or otherwise identifiable in a report.

The identity of a person concerned must also be protected by a prescribed person, suitable person, or Commissioner 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.[123]

A prescribed person's Procedures should include confirmation that the identity of a person concerned must be protected under the Act, while an investigation is ongoing.

The Procedures should include provisions for the protection of a person concerned's identity during the course of an investigation.

12.5 Motivation and disciplinary record of reporting persons

The Procedures should confirm that motivation is irrelevant when determining whether or not a report is a disclosure protected by the Act.[124] All protected disclosures should be dealt with in the same manner regardless of the worker's motivation for making the report, and the worker should be

[121] Per section 16(3)(a)(iii) of the Act.

[122] Per section 6A (1)(a) of the Act.

[123] Per section 16A of the Act.

[124] Per section 5(7) of the Act.

protected so long as the worker reasonably believes that the information disclosed tended to show a wrongdoing.

However, a report made in the absence of a reasonable belief will not attract the protection of the Act and may result in disciplinary action against the reporting person. In addition, disclosure of a wrongdoing does not necessarily confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing.

Where a worker makes a report of alleged wrongdoing, it should be given appropriate consideration, in line with the public body's Procedures. The public body should generally focus on the report made (the message), as opposed to any disciplinary (or other) issues related to the person making the report of a disclosure (the messenger).

In general where a protected disclosure is made by a worker during an investigation, disciplinary or other process involving the worker, this should not affect those distinct processes, except where the investigation, disciplinary or other action represents, in essence, a form of penalisation for making a protected disclosure. This should be confirmed in the Procedures.

The Procedures should make clear that 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. As noted above, 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. This can include the taking of disciplinary action against the worker for matters unrelated to the substance of the report.

The Procedures should make clear that a worker who has made a report should not take it upon themselves to assume responsibility for promoting a culture of transparency within the organisation. While all workers should subscribe to such a culture, the promotion and implementation of such measures is a matter for the Board or other governance bodies of public bodies, and senior management in the organisation.

12.6 Criminal offences

Section 14A of the Act sets out a range of criminal offences for breaches of the protections provided by the Act.

A person commits an offence if they:

I. hinder or attempt to hinder a worker in making a report;

II. penalise or threaten penalisation, or cause or permit any other person to penalise or threaten penalisation against a reporting person, a facilitator, a third person who is connected to the reporting person and who could suffer work related penalisation, or a legal entity the reporting person owns or works for or is otherwise connected with;

III. bring vexatious proceedings against any person or legal entity referred to at II;

IV. breach the duty of confidentiality regarding the identity of reporting persons;

V. make a report containing any information that the reporting person knows to be false, or

VI. fail to comply with the requirement to establish, maintain and operate internal reporting channels and procedures.

If an offence is committed by a public body, and is committed with the consent of, or is attributable to the neglect on the part of a director, manager or other officer of the public body, that person will also be liable for prosecution.[125]

On conviction, fines up to €250,000 or imprisonment for up to 2 years, or both, may be imposed.

[125] Per section 14A(6) of the Act.

13. Implementation and review of Procedures

13.1 Consultation and provision of information and training

13.1.1 INTERNAL REPORTING CHANNELS

It is recommended that each public body consults with management and staff representatives in developing its internal reporting Procedures, having regard to this Guidance.

Section 6A(1)(g) of the Act provides that public bodies are required to provide clear and easily accessible information regarding their Procedures for reporting internally. Therefore, public bodies should ensure that the Procedures are easily available to all categories of workers (including current and former employees, independent contractors, trainees, agency staff, volunteers and job candidates).

In addition to providing a copy of the Procedures to its workers, it is also recommended that the public body communicates the existence of the Procedures appropriately.

Where a substantial or significant level of work is carried out by contractors, public bodies should consider engaging with the employing body (if any) in order to encourage the contractor to also put in place its own Procedures.

General awareness training should be provided to all workers and public bodies should remind workers of the existence of the Procedures and workers should be informed if, and when, changes are made to the Procedures.

New workers joining the public body should be informed during induction training or otherwise of the existence and terms of the Procedures.

Specific training for persons who may be involved in the receipt and investigation of protected disclosures should be provided. In particular, detailed training should be provided to designated persons, and other persons who may be involved in the assessment or investigation of reports of a disclosure. These persons should be familiarised with the requirements of the Act, the obligations of the employer and designated person, and the conduct of assessments and investigations.

13.1.2 EXTERNAL REPORTING CHANNELS

Prescribed persons are required to publish on a website maintained by them or on their behalf, in a separate, easily identifiable and accessible section, the list of information set out at section 7A(10) of the Act.

Similarly, the Commissioner is required to publish on a website maintained by them or on their behalf, in a separate, easily identifiable and accessible section, the list of information set out at section 10B(7) of the Act.

The information required to be published is the same for both prescribed persons and the Commissioner and consists of:

(a) the conditions for qualifying for protection under the Act;

(b) the contact details of the prescribed person to whom a report may be made or the Commissioner for the purpose of making reports to the Commissioner (as relevant) in the manner specified in section 7 of the Act, in particular the electronic and postal addresses and the telephone numbers for making the report, indicating whether the telephone conversations are recorded;

(c) the procedures applicable to the making of reports using the external reporting channels and procedures, including the manner in which the prescribed person or the Commissioner may request the reporting person to clarify the information reported or to provide additional information, the period for providing feedback (including further feedback) and the type and content of such feedback;

(d) the confidentiality regime applicable to reports and, in particular, the information in relation to the processing of personal data in accordance with section 16B of the Act and under applicable data protection law;

(e) the nature of the follow-up to be given in relation to reports;

(f) the remedies and procedures for protection against penalisation and the availability of advice pursuant to Article 20.1(a) of the Directive for persons contemplating making a report (see section 13.2.2, below);

(g) a statement clearly explaining the conditions under which persons making a report using the external channels and procedures are protected from incurring liability for a breach of confidentiality pursuant to sections 14 and 15 of the Act;

(h) contact details for the support services provided under section 21A of the Act; and

(i) such other information as the Minister may specify in guidance under section 21 of the Act.

Appendix C includes an outline of the information prescribed persons must publish in this regard.

In addition to the above, prescribed persons should be proactive in promoting the existence of their external reporting channels to workers in the sectors they regulate and supervise. The benefits of reporting channels to prescribed persons are set out in section 5 of this Guidance.

13.2 Support and advice

13.2.1 INTERNAL SUPPORT AND ADVICE

All public bodies should give consideration to strategies for providing appropriate advice (which for the avoidance of doubt does not include legal advice) and support, such as access to Employee Assistance Programme (or equivalent services), to workers who make reports of wrongdoing. Information should be provided in the Procedures on the support available that may be of assistance to a worker.

13.2.2 EXTERNAL SUPPORT AND ADVICE

Article 20(1)(a) of the Directive requires Member States to ensure that workers have access to comprehensive and independent information and advice, which is easily accessible to the public and free of charge, on the procedures for making a protected disclosure, the protections and remedies from penalisation and the rights of persons concerned. The Department of Public Expenditure, NDP Delivery and Reform provides grant funding to Transparency International Ireland (TII) for the provision of a free Speak Up Helpline and Legal Advice Centre to assist workers who have made a protected disclosure or are considering making a protected disclosure. Further information and contact details can be obtained from TII's website: https://transparency.ie/helpline. The Procedures should include information on how to obtain advice from the helpline.

Support and advice may also be available to workers who are members of a trade union. The Procedures should also include information in this regard.

13.3 Evaluation and review of Procedures

Procedures introduced in a public body should be tailored to the needs of the particular public body taking into account the specific responsibilities, powers and requirements of that body. As is the case for any policy applicable to workers, the Procedures should be clear and accessible and should use simple language.

The control functions of the public body (such as Internal Audit or Compliance) should monitor the operation of the Procedures on an ongoing basis and report to the Audit Committee or equivalent on their findings. Such monitoring should not be conducted by the same person/area that has responsibility for the operation of the Procedures.

It is also recommended that senior management and the appropriate governance bodies of each public body carry out periodic reviews at least annually, and evaluate the Procedures where appropriate.

Prescribed persons

Prescribed persons must review their external reporting channels procedures at least once within 3 years after the date of first publication and at least once every 3 years after this.[126]

The Commissioner

The Commissioner must review the external reporting channels and procedures regularly, but at least once within 3 years after the date of first publication and at least once every 3 years after this.[127]

[126] Per section 7A(11) of the Act.

[127] Per section 10B(8) of the Act.

14. Annual reporting

14.1 Legal requirements

The Act imposes statutory obligations on public bodies, prescribed persons and the Commissioner to provide certain information to the Minister for Public Expenditure, NDP Delivery and Reform ("the Minister") and to publish certain information on an annual basis.

All public bodies, prescribed persons and the Commissioner **must** provide the information required by the Minister and publish the information required under the Act by the statutory deadlines. **If no reports have been received or were processed in the year in question, a nil report must still be made** to the Minister in accordance with section 22(1) of the Act and published in accordance with section 22(5) of the Act.

Section 22(1) of the Act provides that every public body, prescribed person and the Commissioner shall provide information to the Minister on the number of the reports made in each preceding calendar year. This information must be provided to the Minister every year by **1 March**.

Section 22(2) of the Act provides that this information shall be in such format as the Minister may specify. In this regard:

- Section 14.3 of this Guidance sets out the format the Minister requires public bodies to provide information in respect of internal reports made to them under section 6 of the Act;

- Section 14.4 of this Guidance sets out the format the Minister requires prescribed persons to provide information in respect of external reports made to them or transmitted to them under sections 7, 7A, 10C and 10D of the Act.

Section 22(3) of the Act provides that the Minister shall every year submit aggregated information concerning the number of external reports made or transmitted to prescribed persons or the Commissioner to the European Commission.

Section 22(4) of the Act provides that the Minister shall every year publish, in aggregate form, on a website, the information provided to him under section 22(1).

Section 22(5) of the Act provides that every public body, prescribed person and the Commissioner shall by **31 March** every year publish on their websites a report in respect of the immediately preceding calendar year containing:

- A statement that said public body, prescribed person or the Commissioner has established internal reporting channels and procedures in accordance with the Act;

- For prescribed persons and the Commissioner, a statement that said prescribed person or the Commissioner has established external reporting channels and procedures in accordance with the Act; and

- The information provided to the Minister under section 22(1) of the Act.

Section 22(6) of the Act provides that where a public body or a prescribed person publishes an annual report, it can incorporate the information it is required to publish under section 22(5) in said report, provided said annual report is published on the public body's or prescribed person's website and the statutory deadline of 31 March is met.[128] Otherwise it is entirely up to each public body or prescribed person to decide if they want to publish a standalone protected disclosures report or incorporate it into an annual report.

Section 22(7) of the Act provides that the Commissioner shall, not later than **1 March** each year, provide information to the Minister on the number of reports transmitted to other suitable persons under sections 10C(1)(b) and 10D(1)(b) of the Act.

Section 22(8) of the Act provides that the Minister may request, in writing, from a public body, a prescribed person or the Commissioner such further information relating to the implementation of the Act as the Minister may reasonably require.

Section 22(9) of the Act provides that the Commissioner shall publish not later than six months after the end of each year, a report on the performance of their functions under the Act and lay said report before the Houses of the Oireachtas.

14.2 Submission of information to the Minister

A set of templates in Microsoft Excel format have been developed for public bodies, prescribed persons and the Commissioner to submit the information required under section 22(1) of the Act to the Minister. These templates can be downloaded from: www.gov.ie/protected-disclosures.

- Form **PDA-1** is to be used by all public bodies, prescribed persons and the Commissioner to submit information concerning reports made to them via their internal reporting channels.

- Form **PDA-2** is to be used only by all prescribed persons to submit information concerning reports made to them or transmitted to them via their external reporting channels.

- Form **PDA-3** is to be used solely by the Commissioner to submit information concerning reports made to them or transmitted to them under sections 7, 7A and 8 of the Act.

It is mandatory for public bodies, prescribed persons and the Commissioner to use these templates.

Completed templates must be submitted via email to pdreporting@per.gov.ie by the statutory deadline.

[128] As required under section 22(5) of the Act.

14.3 How to complete from PDA-1

Form PDA-1 is solely concerned with recording the number and outcome of reports made via the public body's internal reporting channel. The form can be downloaded from www.gov.ie/protected-disclosures and comprises eight sections as follows:

1. IDENTIFICATION

1.	**Identification**	
1.1	Name of Public Body:	
1.2	Calendar Year covered by this report	

The name of the public body and the calendar year covered by the report should be entered here.

2. REPORTS RECEIVED IN CALENDAR YEAR

2.	**Reports received in calendar year**	
2.1	How many reports were received via internal reporting channels in the calendar year?	

The total number of reports received via the public body's internal reporting channel that triggered (or will trigger) the issuing of an acknowledgement should be recorded here. Reports received via other channels – e.g. received by the Minister or transmitted to the organisation by the Commissioner – should **not** be included. As stated above, form PDA-1 is solely concerned with recording the number of reports made via the internal channel.

Reports or complaints about penalisation against reporting persons should **not** be recorded under this heading.

Where a single report contains a number of different allegations, this should be counted as one report for the purposes of answering this question.

3. ASSESSMENT OF REPORTS

3.	Assessment of reports		
3.1	Of the total number of reports received in the calendar year, how many were:	**(a) Fully**	**(b) Partially**
3.1.1	Awaiting completion of assessment at year end?		
3.1.2	Assessed as warranting further follow-up?		
3.1.3	Referred to another more relevant procedure?		
3.1.4	Closed with no further action taken?		

This section concerns the outcome of assessments of reports received during the year. Where a report contains a range of different allegations, the outcome of the assessment in respect of each of these may vary. Accordingly, two columns – (a) Fully and (b) Partially – are provided in order to answer this question.

Where there is a single outcome to an assessment, please enter the outcome under column (a), Fully. Where multiple outcomes arise, please enter all the apply under column (b), Partially.

EXAMPLE: a single report is received that raises concerns about: (1) potential fraud; (2) a possible data breach; and (3) a recent change to the reporting person's hours of attendance. Following assessment, it is decided that items (1) and (2) will be followed-up in accordance with the public body's internal protected disclosures policy while item (3) will be referred to and dealt with in accordance with the public body's employee grievance policy. This outcome should be recorded in this section of form PDA-1 as follows:

3.1	Of the total number of reports received in the calendar year, how many were:	**(a) Fully**	**(b) Partially**
3.1.1	Awaiting completion of assessment at year end?		
3.1.2	Assessed as warranting further follow-up?		1
3.1.3	Referred to another more relevant procedure?		1
3.1.4	Closed with no further action taken?		

Note that this approach means that the total number of reports recorded in this table does not have to equal that reported in answer to question 2.

4. FOLLOW-UP OF REPORTS

Questions 4.1 to 4.4 concern the number of follow-up procedures opened, underway or closed in the course of the year:

4.	**Follow-up of reports**	
4.1	How many follow-up procedures were opened in the calendar year?	
4.2	How many open follow-up procedures were carried over from the previous year?	
4.3	How many follow-up procedures were closed in the calendar year?	
4.4	How many follow-up procedures remained open at the end of the calendar year?	

"Follow-up procedures" in this context means any form of formal or informal follow-up action taken by the public body to establish the veracity of a report of a relevant wrongdoing. This could include an investigation, an audit, an inspection, etc. It **does <u>not</u> refer** to follow-up or investigation of claims of **penalisation by the reporting person**.

The answer to question 4.1 should include all follow-up procedures opened in the year in question. This may include reports that were received in the previous year but the assessment and decision to follow-up was not made until the current year.

The answer to question 4.2 should include all follow-up procedures that remained open at the end of the previous year and continued into the current year. **It should also include any follow-up procedures still open in the current year that relate to reports received <u>prior</u> to the commencement of the Protected Disclosures (Amendment) Act 2002 – i.e. before 1 January 2023**.

A single report may precipitate more than one follow-up procedure. Each procedure that is opened should be recorded separately.

EXAMPLE: a single report is received that raises concerns about: (1) staff working in a hazardous area without protective equipment; (2) malfunctioning smoke alarms on the public body's premises; and (3) possible theft of stores. Following assessment, it is decided to follow-up on all three allegations. It is decided that two separate follow-up procedures will be opened: a single health and safety investigation in respect of items (1) and (2) and an internal audit and stocktake in respect of item (3). This should be recorded as two follow-up procedures opened in this section of form PDA-1.

Questions 4.5 to 4.7 concern the length of time each follow-up procedure has been open and the time it has taken to complete them:

4.5	Of the number of follow-up procedures reported as still open in response to Q 4.4, how many are:	
4.5.1	Open less than 1 year?	
4.5.2	Open more than 1 year but less than 3 years?	
4.5.3	Open more than three years but less than 5 years?	
4.5.4	Open 5 or more years?	
4.6	What was the **average** length (in weeks) of the follow-up procedures closed in the calendar year?	
4.7	What was the **median** length (in weeks) of the follow-up procedures closed in the calendar year?	

Question 4.6 concerns the average length of follow-up. This should be expressed in terms of the average number of weeks each follow-up procedure took and rounded to the nearest week. The average is calculated by adding up the duration of all of the follow-up procedures closed in the calendar year and dividing by the number of follow-procedures closed in the calendar year.

EXAMPLE: A public body closes four follow-up procedures in the course of the year. The four procedures took 68, 3, 45 and 31 weeks to complete respectively. The sum of these is 147 weeks (68+3+45+31=147). The average is 37 weeks (to the nearest week) – i.e. 147÷4=36.75 (37 rounded).

Question 4.7 concerns the median length of follow-up. Again, this should be expressed in terms of the median number of weeks each follow-up procedure took and rounded to the nearest week. The median is calculated by placing all of the numbers in the data set (i.e. the duration of each of the follow-up procedures closed in the calendar year) in order and taking the middle value. Where there is an even amount of numbers, the median is obtained by adding together the two middle numbers and dividing the result by 2.[129]

EXAMPLE: Same as the example above, a public body closes four follow-up procedures in the course of the year. The four procedures took 68, 3, 45 and 31 weeks to complete respectively. Putting these in order of duration gives: 3, 31, 45 and 68. As there is an even number of procedures, the two middle numbers – 31 and 45 – are taken and divided by 2: 31+45=76, 76÷2=38. The median is 38 weeks.

[129] In Microsoft Excel, the median of a range of numbers can be calculated using the MEDIAN function. See: https://support.microsoft.com/en-us/office/median-function-d0916313-4753-414c-8537-ce85bdd967d2.

5. MATTERS FOLLOWED-UP

5.	**Matters followed-up**	
5.1	Of the follow-up procedures opened in the calendar year in response to Q4.1, how many involved:	
5.1.1	Criminal offences?	
5.1.2	Breaches of a legal obligation?	
5.1.3	Miscarriage of justice?	
5.1.4	Endangerment of health and safety?	
5.1.5	Damage to the environment?	
5.1.6	Unlawful or improper use of public funds?	
5.1.7	Acts or omissions that are oppressive, discriminatory or grossly negligent or constitute gross mismanagement?	
5.1.8	Breaches of EU laws within the scope of Article 2 of Directive (EU) 2019/1937 (the Whistleblowing Directive)?	
5.1.9	Concealment or destruction of information tending to show any matters falling within questions 5.1.5 to 5.1.8?	

Where a follow-up procedure falls under more than one of the headings listed at 5.1.1 to 5.1.9, each heading that applies should be reported on.

EXAMPLE: if a follow-up procedure was opened during the year that concerned both a breach of a legal obligation and damage to the environment, this should be recorded under both headings 5.1.2 and 5.1.5.

If any follow-up procedures have been opened under heading 5.1.8 (breaches of EU laws within the scope of Article 2 of the Whistleblowing Directive[130]), further information should be provided in section 6.

[130] Refer to the definition of a "breach" at section 3(1) of the Act and Schedule 6 of the Act for detailed information as to the type of relevant wrongdoing that falls under this category.

6. FOLLOW-UP OF MATTERS RELATING TO BREACHES OF EU LAW

6.	**Follow-up of matters relating to breaches of EU law**	
6.1	Of the follow-up procedures reported as opened in response to Q5.1.8 (breaches of EU law), if any, how many involved breaches of:	
6.1.1	Public procurement?	
6.1.2	Financial services, products and markets, and prevention of money laundering and terrorist financing?	
6.1.3	Product safety and compliance?	
6.1.4	Transport safety?	
6.1.5	Protection of the environment?	
6.1.6	Radiation protection and nuclear safety?	
6.1.7	Food and feed safety and animal health and welfare?	
6.1.8	Public health?	
6.1.9	Consumer protection?	
6.1.10	Protection of privacy and personal data and security of network and information systems?	
6.1.11	The financial interests of the EU?	
6.1.12	The functioning of the EU Internal Market?	

This section should only be completed if one or more follow-up procedures have been opened in respect of breaches of EU laws within the scope of Article 2 of the Whistleblowing Directive.[131]

[131] Refer to the definition of a "breach" at section 3(1) of the Act and Schedule 6 of the Act for detailed information as to the type of relevant wrongdoing that falls under this category.

7. OUTCOME OF FOLLOW-UP PROCEDURES

7.	Outcome of follow-up procedures		
		(a) Fully	(b) Partially
7.1	Of the follow-up procedures reported as closed in response to Q4.3, how many were closed because no relevant wrongdoing was found or insufficient evidence of a relevant wrongdoing could be found?		
7.2	Of the follow-up procedures reported as closed in response to Q4.3 and the result of the follow-up procedure was that a relevant wrongdoing was found to have occurred, how many resulted in:		
7.2.1	Further proceedings or sanctions?		
7.2.2	Referral or transmission to another body for further follow-up?		
7.2.3	Changes to policies or procedures?		
7.2.4	Recovery of lost funds?		
7.3	Of the follow-up procedures reported as closed in response to Q4.3, what (where relevant) is the estimated financial damage to the public body arising from the relevant wrongdoing reported?		€
7.4	Of the follow-up procedures reported as closed in response to Q4.3, what (where relevant) is the estimated amount of funds recovered by the public body arising from its follow-up?		€

In respect of Q7.1, where none of the allegations of relevant wrongdoing made in a report have been found to have occurred or where no evidence of wrongdoing has been found, this should be recorded under column (a) Fully. Where some allegations have been upheld but others have been found not to have occurred or there is no evidence, this should be recorded under column (b) Partially.

In respect of Q7.2, where there is more than one outcome (e.g. the matter is referred to a body for further action and changes to internal policies or procedures have been made), this should be recorded under all applicable headings.

In respect of Q.7.2.1, "Further proceedings or sanctions" means any further internal actions taken by the public body once it has been established that a relevant wrongdoing has occurred. This includes any disciplinary action taken against persons responsible for the wrongdoing.

In respect of Q 7.2.1, "Referral or transmission to another body for further follow-up" means any further external action taken by the public body. It includes referral of a matter to An Garda Síochána for further follow-up or self-reporting of a wrongdoing to a relevant regulatory agency or supervisory authority.

In respect of Q 7.3, "Financial damage" refers to damaged caused by the relevant wrongdoing reported. The calculation of "financial damage" should include any fines, financial penalties or other damages imposed on the public body arising directly from the wrongdoing reported. It does **not** relate to any **fines or compensation awarded or paid to a reporting person** arising from a claim of penalisation or any **financial damage suffered by the reporting person due to penalisation**.

8. ANONYMOUS REPORTS

8.	**Anonymous reports**	
8.1	Of the total number of reports received in response to Q2, how many were made anonymously?	
8.2	How many follow-up procedures were opened in response to anonymous reports in the calendar year?	
8.3	How many anonymous reporting persons subsequently disclosed their identity to the Designated Person in the calendar year?	

This section concerns the number of anonymous reports that were made via internal channels. Q8.2 concerning the number of follow-up procedures opened in response to anonymous reports should be answered in the manner set out in the instructions for completing section 4.

14.4 How to complete form PDA-2

Form PDA-2 is solely concerned with reports made or transmitted to prescribed persons via their external channels. Form PDA-2 should **only** be completed by prescribed persons.

1. IDENTIFICATION

1.	**Identification**	
1.1	Name of Prescribed Person:	
1.2	Calendar Year covered by this report	

The name of the prescribed person and the calendar year covered by the report should be entered here.

2. REPORTS RECEIVED IN CALENDAR YEAR

2.	**Reports received in calendar year**	
2.1	Of the reports received in the calendar year that is the subject of this report, how many were:	
2.1.1	Received via the external reporting channel established under section 7(2B) of the Act?	
2.1.2	Transmitted by another prescribed person under section 7A(1)(b)(vi) of the Act?	
2.1.3	Transmitted by the Protected Disclosures Commissioner under section 10C(1)(b) of the Act?	
2.1.4	Transmitted by the Protected Disclosures Commissioner under section 10D(1)(b)(ii) of the Act?	
2.1.5	Total number of reports received	0

"Reports" means reports that tend to show "relevant wrongdoings" (as defined in section 5(3) of the Act). The term does **not** refer to reports or complaints of penalisation against reporting persons.

All reports that triggered or will trigger an acknowledgement under the Act (or would have triggered an acknowledgement but the reporting person requested otherwise) should be counted.

Where a single report contains a number of different allegations, this should be counted as one report for the purposes of answering this question.

Where the same report is received from different sources (e.g. if a reporting person makes a report to a prescribed person and also makes the same report to the Protected Disclosures Commissioner, who in turn transmits the report to the prescribed person who also received the report directly), this should be recorded only once under the heading that first received the report.

EXAMPLE: Prescribed Person A receives a report via its external channel on 5 May. The reporting person also sends the same report to the Commissioner on 5 May. The Commissioner identifies Prescribed Person A as the most suitable recipient of the report and transmits it to them, in accordance with

section 10C(1)(b) of the Act, on 14 May. As the report was first received by Prescribed Person A on 5 May via their external channels, this report should be recorded under heading 2.1.1.

Where a report is received via a channel other than the external reporting channel established under the Act and transmitted to the designated person (c.f. section 7A(8) of the Act and section 9.3 of thus Guidance), it should be recorded under heading 2.1.1.

When transmitting a report to a prescribed person, the Commissioner should state whether it is being transmitted under section 10C(1)(b) or 10D(1)(b)(ii) of the Act. If a prescribed person is uncertain as to which section of the Act the report was transmitted under, they should seek clarification from the Commissioner.

The total number of reports – i.e. the sum of the reports that fall under headings 2.1.1 to 2.2.4 – should be recorded under heading 2.1.5.

3. ASSESSMENT OF REPORTS

3.	Assessment of reports		
3.1	Of the total number of reports received in the calendar year, how many were:	**(a) Fully**	**(b) Partially**
3.1.1	Awaiting completion of assessment at year end?		
3.1.2	Assessed as warranting further follow-up?		
3.1.3	Transmitted to another prescribed person or the Protected Disclosures Commissioner?		
3.1.4	Closed because the report was clearly minor?		
3.1.5	Closed because it was a repetitive report containing no meaningful new information?		
3.1.6	Referred to another more relevant procedure?		
3.1.7	Assessed as warranting no further follow-up?		

This section concerns the outcome of assessments of reports received during the year. Where a report contains a range of different allegations, the outcome of the assessment in respect of each of these may vary. Accordingly, two columns – (a) Fully and (b) Partially – are provided in order to answer this question.

Where there is a single outcome to an assessment, please enter the outcome under column (a), Fully. Where multiple outcomes arise, please enter all the apply under column (b), Partially.

EXAMPLE: a single report is received that contains four different allegations of wrongdoing. Following assessment, it is determined that two of the allegations reported warrant further follow-up, one allegation is clearly minor and does not warrant follow-up and one allegation is the responsibility of another prescribed person and has been transmitted to that prescribed person accordingly. This outcome should be recorded in response to Q3 as follows:

3.1	Of the total number of reports received in the calendar year, how many were:	**(a) Fully**	**(b) Partially**
3.1.1	Awaiting completion of assessment at year end?		
3.1.2	Assessed as warranting further follow-up?		1
3.1.3	Transmitted to another prescribed person or the Protected Disclosures Commissioner?		1
3.1.4	Closed because the report was clearly minor?		1
3.1.5	Closed because it was a repetitive report containing no meaningful new information?		
3.1.6	Referred to another more relevant procedure?		
3.1.7	Assessed as warranting no further follow-up?		

Note that this approach means that the total number of reports recorded in this table does not have to equal that reported in answer to question 2.

Where a report is received via the external channel but does not qualify as a protected disclosure (e.g. it made by a member of the general public) but is nevertheless dealt with under another procedure (e.g. a complaints process), this should be recorded under heading 3.1.6.

Where a report is assessed as warranting no further follow-up but does not fall within any of headings 3.1.1 to 3.1.6, it should be recorded under heading 3.1.7. E.g.: if a report is received that does not contain sufficient information to make further follow-up possible.

4. INVESTIGATION OF REPORTS

Questions 4.1 to 4.4 concern the number of investigations opened, underway or closed in the course of the year:

4.	**Investigation of reports**	
4.1	How many follow-up procedures were opened in the calendar year?	
4.2	How many open follow-up procedures were carried over from the previous year?	
4.3	How many follow-up procedures were closed in the calendar year?	
4.4	How many follow-up procedures remained open at the end of the calendar year?	

"Investigation", for the purposes of this exercise, refers to any form of follow-up action taken by the prescribed person to establish the veracity of the information reported. Examples of investigations include, but are not limited to: setting up of investigative committees or commissions, inspections, audits, etc. The term **does not refer** to investigations of claims of **penalisation against reporting persons**.

The answer to question 4.1 should include all investigations opened in the year in question. This may include reports that were received in the previous year but the assessment and decision to investigate was not made until the current year.

The answer to question 4.2 should include all investigations that remained open at the end of the previous year and continued into the current year. **It should also include any investigations still open in the current year that relate to reports received prior to the commencement of the Protected Disclosures (Amendment) Act 2002 – i.e. before 1 January 2023**.

A single report may precipitate more than one investigation. Each investigation that is opened should be recorded separately.

Questions 4.5 to 4.7 concern the length of time each follow-up procedure has been open and the time it has taken to complete them:

4.5	Of the number of investigations reported as still open in response to Q 4.4, how many are:	
4.5.1	Open less than 1 year?	
4.5.2	Open more than 1 year but less than 3 years?	
4.5.3	Open more than three years but less than 5 years?	
4.5.4	Open 5 or more years?	
4.6	What was the **average** length (in weeks) of the investigations closed in the calendar year?	
4.7	What was the **median** length (in weeks) of the investigations closed in the calendar year?	

Question 4.6 concerns the average length of follow-up. This should be expressed in terms of the average number of weeks each follow-up procedure took and rounded to the nearest week. The average is calculated by adding up the duration of all of the follow-up procedures closed in the calendar year and dividing by the number of follow-procedures closed in the calendar year.

EXAMPLE: A prescribed person closes four investigations in the course of the year. The four investigations took 68, 3, 45 and 31 weeks to complete respectively. The sum of these is 147 weeks (68+3+45+31=147). The average is 37 weeks (to the nearest week) – i.e. 147÷4=36.75 (37 rounded).

Question 4.7 concerns the median length of investigation. Again, this should be expressed in terms of the median number of weeks each investigation took and rounded to the nearest week. The median is calculated by placing all of the numbers in the data set (i.e. the duration of each of the investigations closed in the calendar year) in order and taking the middle value. Where there is an even amount of numbers, the median is obtained by adding together the two middle numbers and dividing the result by 2.[132]

EXAMPLE: Same as the example above, a public body closes four investigations in the course of the year. The four investigations took 68, 3, 45 and 31 weeks to complete respectively. Putting these in order of duration gives: 3, 31, 45 and 68. As there is an even number of investigations, the two middle numbers – 31 and 45 – are taken and divided by 2: 31+45=76; 76÷2=38. The median is 38 weeks.

[132] In Microsoft Excel, the median of a range of numbers can be calculated using the MEDIAN function. See: https://support.microsoft.com/en-us/office/median-function-d0916313-4753-414c-8537-ce85bdd967d2.

5. MATTERS INVESTIGATED

5.	**Matters followed-up**	
5.1	Of the follow-up procedures opened in the calendar year in response to Q4.1, how many involved:	
5.1.1	Criminal offences?	
5.1.2	Breaches of a legal obligation?	
5.1.3	Miscarriage of justice?	
5.1.4	Endangerment of health and safety?	
5.1.5	Damage to the environment?	
5.1.6	Unlawful or improper use of public funds?	
5.1.7	Acts or omissions that are oppressive, discriminatory or grossly negligent or constitute gross mismanagement?	
5.1.8	Breaches of EU laws within the scope of Article 2 of Directive (EU) 2019/1937 (the Whistleblowing Directive)?	
5.1.9	Concealment or destruction of information tending to show any matters falling within questions 5.1.5 to 5.1.8?	

Where an investigation falls under more than one of the headings listed at 5.1.1 to 5.1.9, each heading that applies should be reported on.

EXAMPLE: if an investigation was opened during the year that concerned both a breach of a legal obligation and damage to the environment, this should be recorded under both headings 5.1.2 and 5.1.5.

If any follow-up procedures have been opened under heading 5.1.8 (breaches of EU laws within the scope of Article 2 of the Whistleblowing Directive[133]), further information should be provided in section 6.

[133] Refer to the definition of a "breach" at section 3(1) of the Act and Schedule 6 of the Act for detailed information as to the type of relevant wrongdoing that falls under this category.

6. MATTERS INVESTIGATED – BREACHES OF EU LAWS

6.	**Matters investigated – Breaches of EU law**	
6.1	Of the investigations reported as opened in response to Q5.1.8 (breaches of EU law), if any, how many involved breaches of:	
6.1.1	Public procurement?	
6.1.2	Financial services, products and markets, and prevention of money laundering and terrorist financing?	
6.1.3	Product safety and compliance?	
6.1.4	Transport safety?	
6.1.5	Protection of the environment?	
6.1.6	Radiation protection and nuclear safety?	
6.1.7	Food and feed safety and animal health and welfare?	
6.1.8	Public health?	
6.1.9	Consumer protection?	
6.1.10	Protection of privacy and personal data and security of network and information systems?	
6.1.11	The financial interests of the EU?	
6.1.12	The functioning of the EU Internal Market?	

This section should only be completed if one or more follow-up procedures have been opened in respect of breaches of EU laws within the scope of Article 2 of the Whistleblowing Directive.[134]

[134] Refer to the definition of a "breach" at section 3(1) of the Act and Schedule 6 of the Act for detailed information as to the type of relevant wrongdoing that falls under this category.

7. PROCEEDINGS INITIATED

7.	**Proceedings initiated**	
7.1	How many proceedings were initiated on foot of investigations in the calendar year?	
7.2	How many cases were referred to another body to initiate proceedings in the calendar year?	
7.3	What was the **average** length (in weeks) of the proceedings that concluded in the calendar year?	
7.4	What was the **median** length (in weeks) of the proceedings that concluded in the calendar year?	

"Proceedings" covers all types of formal enforcement action taken by a prescribed person triggered wholly or mainly by a report of a relevant wrongdoing. Examples include: warning/improvement notices; fines or other financial penalties; and any judicial proceedings taken (civil or criminal). It **does not include** any proceedings concerning **penalisation of a reporting person**.

"Cases referred to another body" at heading 7.2 could include referral of a matter to An Garda Síochána or the Director of Public Prosecutions for prosecution.

Cases referred to other bodies to initiate proceedings should not be counted in the average and median times reported under headings 7.3. and 7.4.

Please refer to the instructions in respect of the completion of questions 4.6 and 4.7 for instructions as regards the calculation of the average and mean length of proceedings.

8. SUBJECT OF PROCEEDINGS INITIATED

8	**Subject of proceedings initiated**	
8.1	Of the proceedings initiated or referred to another body in the calendar year in response to Q7.1, how many involved:	
8.1.1	Criminal offences?	
8.1.2	Breaches of a legal obligation?	
8.1.3	Miscarriage of justice?	
8.1.4	Endangerment of health and safety?	
8.1.5	Damage to the environment?	
8.1.6	Unlawful or improper use of public funds?	
8.1.7	Acts or omissions that are oppressive, discriminatory or grossly negligent or constitute gross mismanagement?	
8.1.8	Breaches of EU laws within the scope of Article 2 of Directive (EU) 2019/1937 (the Whistleblowing Directive)?	
8.1.9	Concealment or destruction of information tending to show any matters falling within questions 5.1.5 to 5.1.8?	

Where proceedings initiated fall under more than one of the headings listed at 8.1.1 to 8.1.9, each heading that applies should be reported on.

If any proceedings have been initated under heading 8.1.8 (breaches of EU laws within the scope of Article 2 of the Whistleblowing Directive[135]), further information should be provided in section 9.

[135] Refer to the definition of a "breach" at section 3(1) of the Act and Schedule 6 of the Act for detailed information as to the type of relevant wrongdoing that falls under this category.

9. SUBJECT OF PROCEEDINGS INITIATED – BREACHES OF EU LAWS

9.	**Subject of proceedings initiated – Breaches of EU laws**	
9.1	Of the investigations reported as initiated in response to Q8.1.8 (breaches of EU law), if any, how many involved breaches of:	
9.1.1	Public procurement?	
9.1.2	Financial services, products and markets, and prevention of money laundering and terrorist financing?	
9.1.3	Product safety and compliance?	
9.1.4	Transport safety?	
9.1.5	Protection of the environment?	
9.1.6	Radiation protection and nuclear safety?	
9.1.7	Food and feed safety and animal health and welfare?	
9.1.8	Public health?	
9.1.9	Consumer protection?	
9.1.10	Protection of privacy and personal data and security of network and information systems?	
9.1.11	The financial interests of the EU?	
9.1.12	The functioning of the EU Internal Market?	

This section should only be completed if one or more set of proceedings have been initiated in respect of breaches of EU laws within the scope of Article 2 of the Whistleblowing Directive.[136]

[136] Refer to the definition of a "breach" at section 3(1) of the Act and Schedule 6 of the Act for detailed information as to the type of relevant wrongdoing that falls under this category.

10. OUTCOME OF PROCEEDINGS

10.	**Outcome of proceedings**		
10.1	Of the proceedings reported as initiated, how many resulted in:		
10.1.1	Criminal prosecution?		
10.1.2	Fines of other financial penalties?		
10.1.3	Recovery of lost funds?		
10.1.4	Award of damages?		
10.1.5	Other enforcement action?		
10.1.6	No outcome?		
10.2	Of the proceedings reported as initiated, what (where relevant) is the estimated financial damage arising from the wrongdoing reported?		€
10.3	Of the proceedings reported as initiated, what (where relevant) is the total value of fines and/or other financial penalties imposed as a result of these proceedings?		€
10.4	Of the proceedings reported as initiated, what (where relevant) is the estimated amount of funds recovered as a result of proceedings?		€

Where the outcome of proceedings falls under more than one of the headings listed at 10.1.1 to 10.1.6, each heading that applies should be reported on.

"Other enforcement action" refers to any other action taken to address the relevant wrongdoing other than those listed under headings 10.1.1 to 10.1.4. It could include: formal warnings, improvement notices, confiscation of offending items/materials, closure orders, cease and desist orders, etc.

"Financial damage" relates to damage caused by the relevant wrongdoing reported. It does **not** relate to **financial damage suffered by the reporting person due to penalisation**.

For the calculation of "financial damage", the ascertainment of the damage by any public body (including the courts) should be taken into account.

The calculation of "financial damage" **should not include any fines or financial penalties imposed** (these are to be reported under headings 10.3 and 10.4).

Fines and other financial penalties **should not include any damages awarded to a reporting person** or any **fines/penalties imposed for penalisation of a reporting person**.

11. ANONYMOUS REPORTS

11.	**Anonymous reports**	
11.1	Of the total number of reports received in response to Q2, how many were made anonymously?	
11.2	How many investigations were opened in response to anonymous reports in the calendar year?	
11.3	How many proceedings were opened in response to anonymous reports in the calendar year?	
11.4	How many anonymous reporting persons subsequently disclosed their identity in the calendar year?	

This section concerns the number of anonymous reports that were made via internal channels. Q11.2 concerning the number of investigations opened in response to anonymous reports should be answered in the manner set out in the instructions for completing section 4. Q11.3 concerning the number of proceedings opened in response to anonymous reports should be answered in the manner set out in the instructions for completing section 7.

15. Review of this Guidance

This Guidance will be reviewed on a periodic basis by the Minister for Public Expenditure, NDP Delivery and Reform in light of the experience of public bodies in dealing with reports of disclosures under the 2014 Act, as amended.

Note: This Guidance has been produced for information purposes only. It does not impose any legal obligations in itself, nor is it an authoritative statement of the law, which is set out in the Protected Disclosures Act 2014.

Appendix A: Information that should be included in a disclosure

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

(a) that the report is a protected disclosure and is being made under the Procedures;

(b) the reporting person's name, position in the organisation, place of work and confidential contact details;

(c) the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;

(d) whether or not the alleged wrongdoing is still ongoing;

(e) whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;

(f) information in respect of the alleged wrongdoing (what is occurring / has occurred and how) and any supporting information;

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

(h) any other relevant information.

Appendix B: Outline internal reporting policy

This Appendix sets out a suggested structure and wording for a typical internal reporting policy for a public body. Annotations have been provided in the right-hand column to assist public bodies in adapting this layout for their own use.

It is **not** mandatory for public bodies to follow the suggested structure and wording. Public bodies should feel free to amend, add, re-order or delete any sections according to their particular business needs. Public bodies should not feel compelled to amend or update existing policies that are already in place, are in compliance with the requirements of the Act and are working well in practice. However, public bodies in the process of preparing new policies or reviewing/revising existing ones are advised to have regard to this Appendix.

An editable version of this outline policy – without annotations – is available at www.gov.ie/protected-disclosures.

1. INTRODUCTION

[INSERT BODY NAME] is committed to providing workers with a confidential and secure pathway for reporting concerns about wrongdoing in the workplace and also to protecting workers against penalisation for having reported those concerns.

This text should be modified as required to align with any corporate policies pertinent to workplace culture already in the place in the organisation – e.g. mission statements; strategy statements; codes of behaviour/ethics; environmental, social and governance (ESG) policies; etc.

The Protected Disclosures Act 2014 ("the Act") protects workers who report certain workplace wrongdoings. A formal channel for reporting such concerns has been established in accordance with the Act.

This document sets out: how to make a report; the types of wrongdoing that constitute a protected disclosure; what happens when a report is received; and the protections that are available against penalisation for reporting a concern about wrongdoing .

[INSERT BODY NAME] will:

- Keep the identity of the reporting person and any person named in a report confidential;
- Not tolerate any penalisation or threat of penalisation of the reporting person or persons associated with the reporting person;
- Acknowledge all reports within [INSERT NUMBER OF DAYS] days;
- Follow-up diligently on all reports of relevant wrongdoing;
- Provide feedback to the reporting person within [INSERT TIME] of acknowledgement; and

Note that the 7-day time limit for acknowledgement and the 3-month time limit for feedback are statutory maximums. Organisations can set shorter time limits for acknowledgement and feedback if they wish.

- Provide further feedback at [INSERT TIME] intervals on written request.

[INSERT NAME/FUNCTION] has overall responsibility for the Procedures set out in this policy.

This is the person or function with overall responsibility for the development and management of the protected disclosures policy. This does not have to be a named individual – e.g. Head of Corporate Services can inserted here.

[INSERT NAME/FUNCTION] is the Designated Person with day-to-day responsibility for the handling of reports.

This is the designated person or persons referred to in section 6A(1)(c) of the Act. Again this does not have to be a named individual or individuals but can refer to the corporate function where this role is carried out.

Please read this document carefully before making a report. It is solely your responsibility to ensure you meet the criteria for protection under the Act. If you have any queries about this policy, please contact: [INSERT CONTACT DETAILS]. If you require confidential, independent, advice (including legal advice) on the making of a protected disclosure, please refer to section 13 of this document.

2. WHO THIS POLICY APPLIES TO

This policy applies to all "workers". A "worker" is an individual in a work-related relationship with [INSERT BODY NAME] who acquires information on relevant wrongdoings in a work-related context and who is or was:

Local authorities should make clear that the elected members of the authority qualify as members of the administrative, management or supervisory authority.

(a) an employee;
(b) an independent contractor;
(c) an agency worker;
(d) a trainee;
(e) a shareholder of an undertaking;
(f) a member of the administrative, management or supervisory body of an undertaking including non-executive members;
(g) a volunteer;
(h) an individual who acquired information on a relevant wrongdoing during a recruitment process; or
(i) an individual who acquired information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process).

[SPECIFY THE EXTENT TO WHICH WORKERS IN AEGIS BODIES OR SUBSIDIARY ORGANSIATIONS CAN REPORT UNDER THIS POLICY, IF REQUIRED]

See section 8.3 of this Guidance more information.

3. WHAT IS A PROTECTED DISCLOSURE?

Making a report in accordance with the Protected Disclosures Act is referred to as "making a protected disclosure". A "protected disclosure" means a disclosure of "relevant information" made by a "worker" in the manner specified in the Act. The relevant information must, in the reasonable belief of the worker, tend to show one or more relevant wrongdoings and have come to the attention of the worker in a work-related context. These requirements are explained in more detail below.

3.1 WHAT IS RELEVANT INFORMATION?

Relevant information is information which in the reasonable belief of the worker tends to show one or more relevant wrongdoings and it came to the attention of the worker in a work-related context.

The information should disclose facts about someone or something, rather than a general allegation that is not founded on any facts.

Workers should not investigate allegations of wrongdoing. The Designated Person is responsible for the appropriate follow up of all reports.

3.2 WHAT IS A REASONABLE BELIEF?

The worker's belief must be based on reasonable grounds but it is not a requirement that the worker is ultimately correct. Workers are not expected to prove the truth of an allegation.

No disciplinary or other action will be taken against a worker who reasonably believes the information they have reported tends to show a wrongdoing even if the concern raised turns out to be unfounded.

The motivation of the worker in making a report is irrelevant as to whether or not it is a protected disclosure. The worker will be protected if they reasonably believe when making the report that the information disclosed tended to show a relevant wrongdoing.

A report made in the absence of a reasonable belief is not a protected disclosure and may result in disciplinary action. It is a criminal offence to make a report that contains any information the reporting person knows to be false. A person who suffers damage resulting from the

making of a known to be false report has a right to take legal action against the reporting person.

3.3 WHAT ARE RELEVANT WRONGDOINGS?

To qualify as a protected disclosure, the matter reported must be a "relevant wrongdoing". The following are relevant wrongdoings:

(a) that an offence has been, is being or is likely to be committed;
(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services;
(c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
(d) that the health or safety of any individual has been, is being or is likely to be endangered;
(e) that the environment has been, is being or is likely to be damaged;
(f) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur;
(g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement;
(h) that a breach of EU law as set out in the Act, 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 Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other country or territory.

Workers may be subject to mandatory reporting obligations relevant to their role or profession. Such reports may or may not amount to protected disclosures under the Protected Disclosures Act depending on whether the requirements of the Act are met. Legislation other than and in addition to the Protected Disclosures Act may provide for making reports. Workers should ensure that they are aware of what protections, if any, such other legislation and/or the Protected Disclosures

Bodies may wish to consider making specific reference to any such mandatory reporting obligations that may apply to workers in the organisation. Legal advice as regards the precise relationship between the Act and any other such mandatory requirements may be required to give clarity in this regard.

Act makes available to them, and seek legal advice if necessary.

3.4 MATTERS THAT ARE NOT RELEVANT WRONGDOINGS

A matter is not a relevant wrongdoing 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.

A matter concerning interpersonal grievances exclusively affecting a worker is not a relevant wrongdoing, and will not be dealt with under this procedure. Such matters are dealt with under [INSERT NAME OF RELEVANT POLICY].

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. Such matters are dealt with under [INSERT NAME OF RELEVANT POLICY].

Protected disclosures can only be made by workers and be made in a work-related context (see next section). Reports of wrongdoing that do not fulfil this criteria will be dealt with under [INSERT NAME OF RELEVANT POLICIES].

Relevant policies in this context could include, for example, general complaints mechanisms open to the general public, if applicable.

3.5 WHAT IS A WORK-RELATED CONTEXT?

"Work-related context" means current or past work activities 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.

4. HOW TO MAKE A REPORT

Reports should be made to [INSERT NAME OR FUNCTION] who is the Designated Person to receive reports under this policy.

This is the designated person or persons referred to in section 6A(1)(c) of the Act and in the Introduction to this model policy. As advised above, this does not have to be a named individual or individuals but can refer to the corporate function where this role is carried out.

Reports must be made in writing. OR Reports must be made orally. OR Reports can be made in writing or orally.

Select as appropriate depending on whether the policy is to only accept reports in writing or to only accept reports orally or to accept reports both in writing and orally.

Reports can be made as follows: [INSERT DETAILS OF THE PROCESS BY WHICH REPORTS CAN BE MADE]

This should include details, as appropriate, of the dedicated email address; postal address; telephone line (indicate whether the line is manned (and what times it is manned) or uses voice messaging); webform

or any other line of communication by which reports are to be received.

A report can be made by way of a physical meeting upon request. [INSERT DETAILS OF THE PROCESS FOR ARRANGING THIS].

This text is only required if the policy provides for oral reporting. (Section 6A(2)(b) of the Act requires organisations to make provision for physical meetings if their policy allows oral reports).

Reports should contain at least the information set out in Appendix A.

If a standard form is used for the making of a report, a reference to this should be inserted here instead.

5. ANONYMOUS REPORTS

Reports can be made anonymously. Persons who choose to report anonymously and whose report meets the requirements of the Act remain entitled to all of the protections of the Act.

Note that section 8.2 of this Guidance requires that all public bodies accept and follow-up on anonymous reports.

Anonymous reports will be followed-up to the greatest extent possible. However, it may not be possible to fully assess and follow-up on an anonymous report.

In addition, implementing certain elements of this policy – such as seeking further information, maintaining communication and protecting the reporting person's identity or protecting them from penalisation – may not be possible.

6. PROCESS FOLLOWING RECEIPT OF A REPORT

This process shall apply to all reports made in the manner specified in section 4 of this policy. This process may not apply if a report or other communication is made in a manner other than that specified in section 4.

6.1 ACKNOWLEDGEMENT

All reports shall be acknowledged within [INSERT NUMBER OF DAYS] days of receipt.

The statutory maximum time allowed for acknowledgement is 7 days (per section 6A(1)(b) of the Act). A shorter time period can be set, if required.

The acknowledgement shall include:

Refer to section 10.1 of this Guidance for details of what information is recommended to be included with an acknowledgement.

- A copy of these procedures;
- [INSERT ANY OTHER INFORMATION THAT WILL PROVIDED TO THE REPORTING PERSON WITH THE ACKNOWLEDGEMENT].

6.2 ASSESSMENT

The Designated Person shall assess if there is *prima facie* evidence that a relevant wrongdoing might have occurred.

The Designated Person may, if required, make contact with the reporting person, in confidence, in order to seek further information or clarification regarding the matter(s) reported.

If it is unclear as to whether or not a report is a protected disclosure, the report will be treated as a protected disclosure until a definitive conclusion can be made.

It may be necessary to differentiate the information contained in the report. It may be the case that not all of the matters reported fall within the scope of this policy or the Protected Disclosures Act. Different parts of a report may need to be approached separately and some matters may be directed to another, more appropriate, policy or procedure (e.g. personal grievances).

The Designated Person may decide that there is no *prima facie* evidence of a relevant wrongdoing and either close the procedure or refer the matter to another relevant procedure. If this occurs, the Designated Person will notify the reporting person in writing of this decision and the reasons for it.

If the Designated Person decides that there is *prima facie* evidence of a relevant wrongdoing, appropriate action will be taken to address the wrongdoing, having regard to the nature and seriousness of the matter.

The nature and seriousness of the matter reported will inform whether the matter can or should be investigated internally. In some circumstances it may be more appropriate for an investigation to be carried out by external experts, or a statutory body, or for the matter to be reported to An Garda Síochána or other body.

An informal process may be used to address a disclosure where the alleged relevant wrongdoing is relatively straightforward or not very serious, or does not require consideration of the making of adverse findings about any individual.

If a decision to close the matter or refer it to another process is made, a party affected by this decision may

request a review of this decision, via the system of review set out in section 11 of this policy.

6.3 INVESTIGATION

The Designated Person* shall decide whether or not an investigation is required.

**If a body's policy requires a decision to undertake an investigation should lie with another person or function, the text should be amended to reflect this.*

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

Investigations will be undertaken in accordance with the general principles of natural justice and fair procedures and any other relevant procedures of [INSERT NAME OF BODY], as appropriate

Bodies should consider linking to any relevant policies that could come into play here – e.g. fraud policy.

Responsibility for investigating and addressing allegations of wrongdoing lies with [INSERT NAME OF BODY] and not the reporting person. Reporting persons should not attempt to investigate wrongdoing themselves

A review of a decision not to investigate can be requested via the system of review set out in section 11 of this policy.

6.4 FEEDBACK

Feedback will be provided to the reporting person within a reasonable time period and no later than [INSERT TIME] after the initial acknowledgement of the report.

The statutory maximum time within which feedback must be given is 3 months (per section 6A(1)(e) of the Act). A shorter time period can be set if required.

A reporting person can request the Designated Person, in writing, provide further feedback at 3 month intervals until the process of follow-up is completed.

Alternatively, bodies can choose to provide feedback at 3 month intervals automatically as part of this policy. In such instance, the following alternative text is suggested: "Further feedback will be provided at 3 month intervals until the process of follow-up is completed"

Any feedback is provided in confidence and should not be disclosed by the reporting person other than:

(a) as part of the process of seeking legal advice in relation to their report from a solicitor or a barrister or a trade union official; or

(b) if required in order to make a further report through this or another reporting channel provided for under the Act (see next section).

Feedback will include information on the action taken or envisaged to be taken as follow-up to that report and also the reasons for such follow-up.

Feedback will not include any information that could prejudice the outcome of an investigation or any other action that might follow.

Feedback will not include any information relating to an identified or identifiable third party. In particular, feedback will not include any information on any disciplinary process involving another worker. Such information is confidential between the employer and the worker concerned.

If the follow-up process determines that no relevant wrongdoing has occurred, the reporting person will be informed of this in writing and the reasons for this decision. A review of this decision may be requested via the system of review set out in section 11 of this policy.

The final outcome of the process triggered by the report will be communicated to the reporting person, subject to any legal restrictions concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation.

7. OTHER REPORTING CHANNELS

The aim of this policy is to provide a means by which workers can safely and securely raise concerns about relevant wrongdoing and to give certainty that all such concerns will be dealt with appropriately. [INSERT NAME OF BODY] is confident that issues can be dealt with internally and strongly encourages workers to report such concerns internally in accordance with this policy.

There may, however, be circumstances where a worker may not wish to raise their concern internally or if they have grounds to believe that an internal report they have made has not been followed-up properly.

The Protected Disclosures Act sets out a number of alternative external channels for workers to raise concerns. Information regarding these channels is set out in Appendix C of this policy.

It is important to note, however, that if a worker is considering making a disclosure using these other channels, different and potentially more onerous conditions may apply. Workers are advised to seek professional advice before reporting externally. Information on where to seek independent, confidential

advice in this regard can be found at section 13 of this policy.

8. PROTECTION FROM PENALISATION

[INSERT BODY NAME] is committed to protecting workers from penalisation or a threat of penalisation because the worker made a protected disclosure. Acts of penalisation will not be tolerated.

If a worker is penalised or threatened with penalisation this can be reported to [INSERT NAME] and the report will be followed-up in accordance with [INSERT REVELVANT PROCEDURES]

The procedures for addressing complaints of penalisation can be incorporated into this policy or set out in a separate document with a link from this policy.

Penalisation is any direct or indirect act or omission that occurs in a work-related context, which is prompted by the making of a protected disclosure and causes or may cause unjustified detriment to a worker.

Penalisation includes, but is not limited to:

(a) Suspension, layoff or dismissal;
(b) Demotion, loss of opportunity for promotion or withholding promotion;
(c) Transfer of duties, change of location of place of work, reduction in wages or change in working hours;
(d) The imposition or administering of any discipline, reprimand or other penalty (including a financial penalty);
(e) Coercion, intimidation, harassment or ostracism;
(f) Discrimination, disadvantage or unfair treatment;
(g) Injury, damage or loss;
(h) Threat of reprisal;
(i) Withholding of training;
(j) A negative performance assessment or employment reference;
(k) Failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanent employment;
(l) Failure to renew or early termination of a temporary employment contract;
(m) Harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income;
(n) Blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry;
(o) Early termination or cancellation of a contract for goods or services;

(p) Cancellation of a licence or permit; and
(q) Psychiatric or medical referrals.

Appropriate action, which may include disciplinary action, will be taken against a worker who penalises a reporting person or other individual due to the making of a protected disclosure.

The normal management of a worker who has made a protected disclosure is not penalisation.

If a protected disclosure is made during an investigation or disciplinary process to which the reporting person is subject, it will not automatically follow that the making of the report will affect the investigation or disciplinary process. Separate processes unconnected with the disclosure will ordinarily continue to proceed.

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

The Protected Disclosures Act provides that a worker who suffers penalisation as a result of making a protected disclosure can make a claim for redress through either the Workplace Relations Commission or the courts, as appropriate.

A claim concerning penalisation or dismissal must be brought to the Workplace Relations Commission within 6 months of the date of the act of penalisation or the date of dismissal to which the claim relates.

A claim for interim relief pending proceedings at the Workplace Relations Commission or the courts must be made to the Circuit Court within 21 days of the last date of penalisation or date of dismissal.

It is a criminal offence to penalise or threaten penalisation or permit any other person to penalise or threaten penalisation against any of the following:

- The reporting person;
- A facilitator (a person who assists the reporting person in the reporting process);
- A person connected to the reporting person, such as a colleague or a relative; or
- An entity the reporting person owns, works for or is otherwise connected with in a work-related context.

Please refer to section 13 of this policy on how to obtain further information and independent, confidential advice in relation to these statutory rights.

9. PROTECTION FROM LEGAL LIABILITY

Civil legal action, with the exception of defamation, cannot be taken against a worker who makes a protected disclosure. Workers can be sued for defamation but are entitled to the defence of "qualified privilege". This means that it should be very difficult for a defamation case against a worker to succeed if the worker can show they have made a protected disclosure. There is no other basis under which a worker can be sued if they have made a protected disclosure.

If a worker is prosecuted for disclosing information that is prohibited or restricted, it is a defence for the worker to show they reasonably believed they were making a protected disclosure at the time they disclosed the information.

It is not permitted to have clauses in agreements that prohibit or restrict the making of a protected disclosure, exclude or limit any provision of the Act, preclude a person from bringing proceedings under or by virtue of the Act or preclude a person from bringing proceedings for breach of contract in respect of anything done in consequence of making a protected disclosure.

Please refer to section 13 of this policy on how to obtain further information and independent, confidential advice in relation to these statutory rights.

10. CONFIDENTIALITY AND PROTECTION OF IDENTITY

[INSERT BODY NAME] is committed to protecting the confidentiality of the identity of both workers who raise a concern under these procedures and any third party mentioned in a report and to treating the information disclosed in confidence.

Refer to section 12.4 of this Guidance for matters that should be taken into consideration in maintaining confidentiality.

[INSERT MEASURES THE PUBLIC BODY WILL TAKE TO PROTECT THE IDENTITY OF THE REPORTING PERSON AND OTHER THIRD PARTIES AND TO ENSURE CONFIDENTIALITY OF THE INFORMATION DISCLOSED].

Subject to the exceptions below, the identity of the reporting person or any information from which their identity may be directly or indirectly deduced will not be shared with anyone other than persons authorised to

receive, handle or follow-up on reports made under this policy without the explicit consent of the reporting person.

The Protected Disclosures Act provides for certain exceptions where a reporting person's identity or information that could identify the reporting person can be disclosed without the reporting person's consent. There are:

(a) Where the disclosure is a necessary and proportionate obligation imposed by EU or national law in the context of investigations or judicial proceedings, including safeguarding the rights of defence of persons connected with the alleged wrongdoing;

(b) Where the person to whom the report was made or shared shows they took all reasonable steps to avoid disclosing the identity of the reporting person or any information that could identify the reporting person;

(c) Where the person to whom the report was made or shared reasonably believes disclosing the identity of the reporting person or information that could identify the reporting person is necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment; and

(d) Where the disclosure is otherwise required by law.

Where a reporting person's identity or information that could identify a reporting person is to be disclosed under exceptions (a) to (d), above, the reporting person will be notified in writing in advance, unless such notification would jeopardise:

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

A reporting person may request a review of a decision to disclose their identity under the System of Review set out in section 11 of this policy.

Circumstances may arise where protection of identity is difficult or impossible – e.g. if the nature of the information disclosed means the reporting person is easily identifiable. If this occurs, the risks and potential

actions that could be taken to mitigate against them will be outlined and discussed with the reporting person.

Other employees must not attempt to identify reporting persons. Attempts to do so may result in disciplinary action.

[INSERT DETAILS OF HOW A WORKER CAN MAKE A COMPLAINT IF THEY BELIEVE THEIR IDENTITY HAS BEEN DISCLOSED].

Records will be kept of all reports, including anonymous reports, in accordance with applicable polices concerning record keeping, data protection and freedom of information. Please refer to Appendix B of this policy for further information.

11. SYSTEM OF REVIEW

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.

[INSERT DETAILS OF A HOW A REQUEST FOR A REVIEW CAN BE MADE AND THE PROCESSES THAT WILL APPLY TO ANY REVIEW]

Refer to section 10.4 of this Guidance for details as to what information should be provided here.

12. RELATED POLICIES AND PROCEDURES

[INSERT INFORMATION IN RESPECT OF RELATED POLICIES AND PROCEDURES]

This section should be used to point workers to any other polices or procedures that should be read in conjunction with this policy. This could include, for example, polices on grievance, discipline, fraud, etc.

13. SUPPORTS AND INFORMATION

Transparency International Ireland operates a free Speak-Up Helpline that offers support and advice (including legal advice) for workers who have reported or plan to report

Up to date contact details for the TII helpline can be found at: https://transparency.ie/helpline

wrongdoing. The helpline can be contacted by INSERT CONTACT DETAILS HERE]

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

[INSERT DETAILS OF EMPLOYEE ASSISTANCE SERVICE]

If available.

[INSERT DETAILS OF ANY OTHER SUPPORTS OR SERVICES, AS APPROPRIATE].

If available.

14. REVIEW OF THIS POLICY

This policy will be reviewed periodically by [INSERT NAME OF FUNCTION THAT WILL REVIEW THE POLICY] and at least on an annual basis.

APPENDIX A – WHAT TO INCLUDE IN A DISCLOSURE

Reports should contain at least the following information:

If a standard form is used for the making of reports, this can be inserted here instead or in addition to this section.

a. that the report is a protected disclosure and is being made under the procedures set out in this Policy;

b. the reporting person's name, position in the organisation, place of work and confidential contact details;

c. the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;

d. whether or not the alleged wrongdoing is still ongoing;

e. whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;

f. information in respect of the alleged wrongdoing (what is occurring / has occurred and how) and any supporting information;

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

h. any other relevant information.

APPENDIX B – RECORD KEEPING, DATA PROTECTION AND FREEDOM OF INFORMATION

B.1 RECORD KEEPING

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

Where a report is made via [INSERT DETAILS OF RECORDED TELEPHONE LINE OR VOICE MESSAGING SYSTEM], [INSERT WHETHER A COPY OF THE RECORDING WILL BE KEPT OR WHETHER A TRANSCRIPT OF THE MESSAGE/CONVERSATION WILL BE MADE]. [IF A TRANSCRIPT IS MADE, INCLUDE THE FOLLOWING: The reporting person shall be offered an opportunity to check rectify and agree this transcript.]

If the policy provides for oral reporting, this text can be used if a recorded telephone line or voice messaging system is used for receiving oral reports.

Where a report is made via [INSERT DETAILS OF TELEPHONE LINE], the report shall be documented by way of accurate minutes of the conversation taken by the staff member who receives the report. The reporting person shall be offered an opportunity to check, rectify and agree these minutes.

If the policy provides for oral reporting, this text can be used if a non-recorded telephone line is used for receiving oral reports.

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 staff member who receives the report. The reporting person shall be offered an opportunity to check, rectify and agree these minutes.

If the policy provides for oral reporting, this text can be used where a worker exercises their right to make a report at a physical meeting..

[INSERT DETAILS OF HOW RECORDS WILL BE KEPT OF ANY SUBSEQUENT FOLLOW-UP MEETINGS THAT ARISE (E.G. TO SEEK ADDITIONAL INFORMATION OR CLARIFICATION)].

[INSERT LINK TO ANY RELEVANT ORGANISATIONAL RECORD KEEPING OR RECORDS MANAGEMENT POLICIES]

As appropriate.

B.2 DATA PROTECTION

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

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.

[INSERT DATA PRIVACY NOTICE]

B.3 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 it was made.

APPENDIX C – OTHER DISCLOSURE CHANNELS

C.1 OVERVIEW

The aim of this policy is to provide a means by which workers can safely and securely raise concerns about relevant wrongdoing and to give certainty that all such concerns will be dealt with appropriately. [INSERT NAME OF BODY] is confident that issues can be dealt with internally and strongly encourages workers to report such concerns internally in accordance with this policy.

There may, however, be circumstances where a worker may not wish to raise their concern internally or if they have grounds to believe that an internal report they have made has not been followed-up properly.

The Protected Disclosures Act sets out a number of alternative external channels for workers to raise concerns. Information regarding these channels is set out below.

Workers should note that different and potentially more onerous conditions may apply when using these channels. Workers are advised to seek professional advice before reporting externally. Information on where to seek independent, confidential advice in this regard can be found at section 13 of this policy.

The information set out in this Appendix gives a general overview of the other disclosure channels available under the Act. It does not purport to be legal advice or a legal interpretation of the Protected Disclosures Act. It is entirely a matter for each worker to satisfy themselves that they are reporting in accordance with the Act.

C.2 REPORTING TO A PRESCRIBED PERSON

The conditions applying to reporting to a prescribed person are set out in section 7 of the Protected Disclosures Act.

Prescribed persons are designated by the Minister for Public Expenditure, NDP Delivery and Reform to receive reports of wrongdoing in respect of matters they regulate or supervise.

If a worker wishes to make a report to a prescribed person, in addition to having a reasonable belief that the information they report tends to show a relevant wrongdoing, they must also reasonably believe the information they report is substantially true and that the relevant wrongdoing they wish to report falls within the description of matters for which the person is prescribed.

Prescribed persons are required to have formal channels to receive reports to them under the Act and to acknowledge, follow-up and give feedback on all reports received.

If a worker decides to report to a prescribed person, they must make sure that they choose the right person or body for their issue. For example, if they are reporting a breach of data protection law, they should contact the Data Protection Commission. A full list of prescribed persons and a description of the matter for which they have been prescribed can be found at: www.gov.ie/prescribed-persons/.

C.3 REPORTING TO THE PROTECTED DISCLOSURES COMMISSIONER

The conditions applying to reporting to the Protected Disclosures Commissioner are set out in section 7 of the Protected Disclosures Act.

The Protected Disclosures Commissioner is an alternative means by which a worker can make a report under section 7 of the Act. In particular, the Commissioner can assist where the worker is uncertain as to which prescribed person to report to. The Commissioner will transmit the report to the correct prescribed person or to another person the Commissioner considers suitable to follow-up on the report. In exceptional circumstances (e.g. if no prescribed person or suitable person can be found) the Commissioner will follow-up directly on a report.

If a worker wishes to make a report to the Commissioner, in addition to having a reasonable belief that the information they report tends to show a relevant wrongdoing, they must also reasonably believe the information they report and any allegation contained in it is substantially true.

The Commissioner has established formal channels for workers to make reports under the Act. Information on how to report to the Commissioner is available at: https://www.opdc.ie/.

C.4 Reporting to institutions of the EU

The conditions applying to reporting to institutions of the EU is set out in section 7B of the Act.

If the relevant wrongdoing a worker wishes to report concerns a breach of European Union (EU) law, as set out EU Directive 2019/1937 on the protection of persons who report breaches of Union law, they can report to a relevant institution, body, office or agency of the EU, provided:

- the worker believes the information they wish to report is true at the time of reporting; and
- the information falls with the scope of EU Directive 2019/1937.

A number of these EU institutions have formal channels for receiving reports from workers. A worker wishing to make such a report should contact the institution concerned for information in this regard.

C.5 Reporting to a Minister

The conditions applying to reporting to a Minister are set out in section 8 of the Protected Disclosures Act.

A worker who is or was employed by a public body can make a report to the Minister or Minister of State responsible for the public body concerned, provided one or more of the following conditions is met:

- the worker has previously made a report of substantially the same information to their employer or other responsible person; or to a prescribed person; or 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.

In the case of [INSERT BODY NAME HERE], the relevant Minister is [INSERT TITLE OF RELEVANT MINISTER].

[INSERT DETAILS OF HOW TO MAKE A REPORT TO THE RELEVANT MINISTER]

Ministers are required to publish this information on a website (per section 8(4) of the Act).

If a report is made to the Minister, it will within 10 days of receipt, be transmitted, without consideration, directly to the Protected Disclosures Commissioner.

C.6 REPORTING TO A LEGAL ADVISER

The conditions for reporting to a legal adviser are set out in section 9 of the Act.

A worker can disclose information concerning a relevant wrongdoing to a barrister, a solicitor or a trade union official (or an official of an excepted body under section 6 of the Trade Union Act 1941) in the course of obtaining legal advice, including advice in relation to the operation of the Protected Disclosures Act.

C.7 REPORTING TO OTHER THIRD PARTIES

There are specific – and more onerous – conditions that must be met for a worker to be protected if they make a disclosure to any person other than their employer or other responsible person, a prescribed person, the Protected Disclosures Commissioner or a relevant Minister. These are set out in section 10 of the Protected Disclosures Act.

The worker must reasonably believe that the information disclosed in the report, and any allegation contained in it, is substantially true, and that at least one of the following conditions is met:

- the worker previously made a disclosure of substantially the same information to their employer or other responsible person; 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.

C.8 Reporting of matters related to law enforcement and the administration of justice

Bodies that are primarily involved in the area of law enforcement and the administration of justice are advised to set out the conditions applying under section 17 of the Act in greater detail.

Section 17 of the Protected Disclosures Act sets out certain special conditions that apply to the reporting of matters relating to law enforcement and the administration of justice. A full definition of what constitutes such matters is set out in section 17(1) of the Act.

In general, reports concerning law enforcement and the administration of justice can only be made:

- To the workers employer in accordance with this policy; or
- To a prescribed person, if a person has been prescribed in respect of the matter the worker wishes to report; or
- To the Comptroller and Auditor General, if the report contains taxpayer information.

A worker can also disclose information concerning a relevant wrongdoing in this area to a legal adviser or a trade union official (or an official of an excepted body under section 6 of the Trade Union Act 1941) in the context of seeking legal advice regarding their disclosure.

A report on matters concerning law enforcement and the administration of justice can in certain circumstances be made to a member of Dáil Éireann or Seanad Éireann. Section 17 sets out the specific conditions that apply in this case. Workers should familiarize themselves with these conditions and seek legal advice if required.

No other form of disclosure of these matters is permitted under the Protected Disclosures Act.

C.9 Reporting of matters related to security, defence, international relations and intelligence

Bodies that are primarily involved in these areas are advised to set out the conditions applying under section 18 of the Act in greater detail.

Section 18 of the Protected Disclosures Act sets out certain special conditions that apply to the reporting of matters relating to security, defence, international relations and intelligence. A full definition of what constitutes such matters is set out in sections 18(1) and 18(2) of the Act.

Reports concerning matters relating to these areas can only be made:

- To the worker's employer, in accordance with this policy;
- To a relevant Minister in accordance with section 8 of the Protected Disclosures Act;
- To the Disclosures Recipient in accordance with section 10 of the Protected Disclosures Act.

A worker can also disclose information concerning a relevant wrongdoing in these areas to a legal adviser or a trade union official (or an official of an excepted body under section 6 of the Trade Union Act 1941) in the context of seeking legal advice regarding their disclosure.

[INSERT DETAILS OF HOW REPORTS CAN BE MADE TO THE DISCLOSURES RECIPIENT]

No other form of disclosure of these matters is permitted under the Protected Disclosures Act.

This information is published on www.gov.ie/protected-disclosures

Appendix C: Outline external reporting policy

This Appendix sets out a suggested structure and wording for a typical external reporting policy for a prescribed person. Annotations have been provided in the right-hand column to assist prescribed persons in adapting this layout for their own use.

It is **not** mandatory for prescribed persons to follow the suggested structure and wording. Prescribed persons should feel free to amend, add, re-order or delete any sections according to their particular business needs. Prescribed persons should not feel compelled to amend or update existing policies that are already in place, are in compliance with the requirements of the Act and are working well in practice. However, prescribed persons in the process of preparing new policies or reviewing/revising existing ones are advised to have regard to this Appendix.

An editable version of this outline policy – without annotations – is available at www.gov.ie/protected-disclosures.

1. INTRODUCTION

[INSERT NAME OF PRESCRIBED PERSON] has been prescribed under the Protected Disclosures Act 2014 to receive protected disclosures in respect of the following:

The name of the prescribed person should be that specified in the relevant statutory instrument designating said person as a prescribed person – e.g. "The Chief Executive of the Commissioners of Irish Lights".

[INSERT MATTERS IN RESPECT OF WHICH THE PERSON HAS BEEN PRESCRIBED TO RECEIVE PROTECTED DISCLOSURES]

The matters listed here should be that specified in the relevant statutory instrument designating the relevant prescribed person – e.g. in the case of the Commissioners of Irish Lights, this should be "All matters relating to the superintendence, provision and management of aids to navigation and allied services for the safety of persons at sea."

The Protected Disclosures Act ("the Act") protects workers from retaliation if they speak up about certain wrongdoings in the workplace. Persons who make protected disclosures (sometimes referred to as "whistleblowers") are protected by the Act. They should not be treated unfairly or lose their job because they have made a protected disclosure.

A worker may choose to report internally to their employer or, if certain conditions are satisfied, a worker can choose to report externally to a prescribed person.

In accordance with the Act, [INSERT BODY NAME] has established a formal channel for workers who wish to make an external report to them in relation to the matters set out above.

[INSERT BODY NAME] will:

- Keep the identity of the reporting person and any person named in a report confidential;

Note that the 7-day time limit for acknowledgement is a statutory maximum. Prescribed persons can set shorter time limits for acknowledgement.

- Acknowledge all reports within [INSERT NUMBER OF DAYS] unless the reporting person requests otherwise;
- Assess and, where appropriate, follow-up on the information contained in the report;
- Provide feedback to the reporting person; and
- Provide information to the reporting person on the final outcome of their report.

This policy also applies to any reports transmitted to [INSERT BODY NAME] by another prescribed person or the Protected Disclosures Commissioner in accordance with the Act.

Please read this document carefully before making a report. It is solely your responsibility to ensure you meet the criteria for protection under the Act. If you have any queries about this policy, please contact: [INSERT CONTACT DETAILS]. If you require confidential, independent, advice (including legal advice) on the making of a protected disclosure, please refer to section 10 of this document.

2. CONDITIONS UNDER WHICH A REPORT TO [INSERT BODY NAME] QUALIFIES AS A PROTECTED DISCLOSURE

2.1 WHAT IS A PROTECTED DISCLOSURE?

A "protected disclosure" is a disclosure of "relevant information" made by a "worker" in the manner specified in the Act. The relevant information must, in the reasonable belief of the worker, tend to show one or more "relevant wrongdoings" and have come to the attention of the worker in a "work-related context".

To report to [INSERT NAME OF BODY] or any other prescribed person a worker must also reasonably believe:

(a) that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed to receive disclosures;

and

(b) that the information disclosed, and any allegation contained in it, are substantially true.

You must fulfil all of the requirements set out in the Act in order for your report to qualify as a protected disclosure. These requirements are explained in more detail below.

If you are uncertain as to whether your report qualifies as a protected disclosure, you should seek professional advice. If you require confidential, independent, advice (including legal advice) on the making of a protected disclosure, please refer to section 10 of this document.

2.2 WHO CAN MAKE A PROTECTED DISCLOSURE?

You can make a protected disclosure if you are a "worker". A "worker" is an individual who acquires information on relevant wrongdoings in a work-related context and who is or was:

(a) an employee;

(b) an independent contractor;

(c) an agency worker;

(d) a trainee;

(e) a shareholder of an undertaking;

(f) a member of the administrative, management or supervisory body of an undertaking including non-executive members;

(g) a volunteer;

(h) an individual who acquired information on a relevant wrongdoing during a recruitment process;

(i) an individual who acquired information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process).

If you are **not** a worker, you cannot make a protected disclosure and you are **not** protected by the Act. [INSERT DETAILS OF HOW NON-WORKERS CAN MAKE A REPORT, IF REQUIRED]

If required, insert information here as to how non-workers can make a report – e.g. if there is a complaint line available to members of the public etc.

2.3 WHAT IS RELEVANT INFORMATION?

Relevant information is information which in the reasonable belief of the worker tends to show one or more relevant wrongdoings and it came to the attention of the worker in a work-related context.

The information you report should disclose facts about someone or something, rather than a general allegation that is not founded on any facts.

You should not investigate allegations of wrongdoing or gather additional evidence or information – just tell us the facts that you know.

2.4 WHAT IS REASONABLE BELIEF?

Your belief must be based on reasonable grounds but it is not a requirement that you are ultimately correct. You are not expected to prove the truth of an allegation. Once the requirements of the Act have been satisfied, you remain entitled to the protections of the Act even if the information you have reported turns out to be unfounded.

Your motivation for making a report is irrelevant as to whether or not it is a protected disclosure

A report made in the absence of reasonable belief is not a protected disclosure and could lead to your employer taking disciplinary action against you. It is a criminal offence to make a report that contains any information that you know to be false. You could also face legal action from any person who suffers damage resulting from a report you have made that you know to be false.

2.5 WHAT ARE RELEVANT WRONGDOING?

To qualify as a protected disclosure, the information you report must concern a "relevant wrongdoing". The following are relevant wrongdoings:

(a) that an offence has been, is being or is likely to be committed;

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services;

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur;

(d) that the health or safety of any individual has been, is being or is likely to be endangered;

(e) that the environment has been, is being or is likely to be damaged;

(f) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur;

(g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement;

(h) that a breach of EU law as set out in the Act, 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.

In order to report to [INSERT BODY NAME], the information you wish to report must concern a relevant wrongdoing **and** fall within the scope of the matters for which [INSERT BODY NAME] has been prescribed under the Act. See section 2.8, below, for further information on what can be reported to us.

2.6 MATTERS THAT ARE NOT RELEVANT WRONGDOINGS

A matter is not a relevant wrongdoing 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.

A matter concerning interpersonal grievances exclusively affecting a worker is not a relevant wrongdoing, and will not be dealt with under this procedure. Such grievances should be raised with your employer in accordance with their policy on such matters.

Failure to comply with a legal obligation that arises solely under your contract of employment or any other contract where you undertake to do or perform personally any work or services is not a relevant wrongdoing. Such matters should be raised with your employer in accordance with their policy in this area.

Protected disclosures can only be made by workers and must meet the requirements of the Act (see next section). Reports that do not fulfil this criteria may be dealt with under [INSERT NAME OF RELEVANT POLICY].

If required, insert information here as to how non-workers can make a report – e.g. if there is a complaint line available to members of the public etc.

2.7 WHAT IS A WORK-RELATED CONTEXT?

"Work-related context" means current or past work activities in the public or private sector through which, irrespective of the nature of those activities, you acquire

information concerning a relevant wrongdoing and within which you could suffer penalisation if you reported such information.

2.8 WHO CAN A PROTECTED DISCLOSURE BE MADE TO?

You can report internally to your employer and, if you are comfortable with this, you are encouraged to do so. Most protected disclosures are made internally in the first instance.

You do **not** have to report to your employer before you can report to a prescribed person.

Your employer may have a protected disclosures or whistleblowing policy. All public sector bodies, regardless of size, and all employers with 50 or more employees are required, under the Act, to have formal channels and procedures for their workers to report relevant wrongdoing.

Prescribed persons responsible for sectors where the 50 employee threshold does not apply – i.e. financial services; aviation and maritime safety; and offshore oil and gas safety – should modify this text accordingly.

If you don't want to report to your employer or reporting to your employer hasn't worked, you may have the option of reporting to a prescribed person.

[INSERT BODY NAME] is a prescribed person.

In order to report to us, the information you wish to report must have come to your attention in a work-related context and you must reasonably believe:

(a) That the information tends to show one or more relevant wrongdoings;

(b) That the information, and any allegation contained in it, is substantially true;

and

(c) That the information falls within the description of matters for which [INSERT BODY NAME] has been prescribed. These matters are:

[INSERT MATTERS IN RESPECT OF WHICH THE PERSON HAS BEEN PRESCRIBED TO RECEIVE PROTECTED DISCLOSURES]

The matters listed here should be that specified in the relevant statutory instrument designating the relevant prescribed person – e.g. in the case of the Commissioners of Irish Lights, this should be "All matters relating to the superintendence, provision and management of aids to navigation and allied services for the safety of persons at sea."

[INSERT ADDITIONAL INFORMATION IN PLAIN LANAGUAGE REGARDING THE MATTERS FOR WHICH THE PERSON HAS BEEN PRESCRIBED, IF REQUIRED]

Where the language used in the statutory instrument is of a technical legal nature (e.g. lists sections of an Act), then additional text should be provided in plain language setting out what matters can be reported the prescribed person and clarify any matters that do not fall under the prescribed person's remit..

If the matter you wish to report is a relevant wrongdoing but does not fall under the description of matters set out above, it may be possible that another prescribed person can deal with your report. A full list of all of the prescribed persons and the matters that can be reported to them can be found at: www.gov.ie/prescribed-persons/.

If you are uncertain as to who the correct prescribed person to report to is or there does not appear to be a prescribed person for the matter you wish to report, you can make a report to the Protected Disclosures Commissioner. Details of how to report to the Commissioner can be found at: https://www.opdc.ie/.

If the relevant wrongdoing you wish to report concerns a breach of European Union (EU) law, as set out EU Directive 2019/1937 on the protection of persons who report breaches of Union law, you can report to a relevant institution, body, office or agency of the EU, provided:

- you believe the information you wish to report is true at the time of reporting; and
- the information falls with the scope of EU Directive 2019/1937.

If reporting to your employer and/or reporting to a prescribed person does not work or there are justifiable grounds for not reporting to either your employer or a prescribed person, the Act provides that you can report to:

- A relevant Minister of the Government, if you are employed by a public body; or
- Any other third party.

The conditions for reporting via these channels are more onerous than those that apply to reporting to your employer or a prescribed person or the Protected Disclosures Commissioner. You may wish to seek professional advice before using these channels. Please refer to section 10 of this document for information as to where to seek further advice in this regard.

3. HOW TO MAKE A REPORT

Reports should be made to [INSERT NAME OR FUNCTION] who is the Designated Person to receive reports under this policy.

This is the designated person or persons referred to in section 7A(7) of the Act. This does not have to be a named individual or individuals but can refer to the corporate function where this role is carried out.

Reports can be made in writing or orally.

As required under section 7A(6)(a) of the Act.

Reports can be made as follows:

[INSERT DETAILS OF THE PROCESS BY WHICH REPORTS CAN BE MADE]

This should include details, as appropriate, of the dedicated email address; postal address; telephone line (indicate whether the line is manned (and what times it is manned) or uses voice messaging); webform or any other line of communication by which reports are to be received.

A report can be made by way of a physical meeting upon request. [INSERT DETAILS OF THE PROCESS FOR ARRANGING THIS].

As required under section 7A(6)(b) of the Act.

It is recommended that reports contain at least the information set out in Appendix A.

If a standard form is used for the making of a report, a reference to this should be inserted here instead.

Where the Designated Person receives reports transmitted to us under the Act by other prescribed persons or the Protected Disclosures Commissioner, this policy will apply to those reports.

Any reports made to us via channels other than that set out in this section that, in our opinion, may qualify as a protected disclosure will be transmitted promptly and without modification to the Designated Person and this policy will apply to those reports.

As required under section 7A(8) of the Act.

4. ANONYMOUS REPORTS

Reports can be made anonymously. If you choose to report anonymously and your report meets the requirements of the Act, you remain entitled to the protections of the Act if you are subsequently identified and penalised for making your report.

Note that section 7A(12) of the Act and section 8.4 of this Guidance requires that all prescribed persons accept and follow-up on anonymous reports unless precluded from doing so by another enactment.

If a prescribed person is precluded by statute from receiving and following-up on anonymous reports, a statement to this effect, referencing the relevant statutory provision, should be provided in this section instead.

Anonymous reports will be followed-up to the greatest extent possible. However, it may not be possible to fully assess and follow-up on an anonymous report.

In addition, implementing certain elements of this policy – such as seeking further information from you, maintaining communication with you and protecting your identity – may not be possible.

5. PROCESS FOLLOWING RECEIPT OF A REPORT

5.1 ACKNOWLEDGEMENT

We will acknowledge all reports in writing within [INSERT NUMBER OF DAYS] days of receipt unless:

The statutory maximum time allowed for acknowledgement is 7 days (per section 7A(1)(a) of the Act). A shorter time period can be set, if required.

(a) you request that no acknowledgement is made;

or

(b) we reasonably believe that to issue an acknowledgement would jeopardise the protection of your identity.

The acknowledgement shall include:

- A copy of these procedures;
- [INSERT ANY OTHER INFORMATION THAT WILL PROVIDED TO THE REPORTING PERSON WITH THE ACKNOWLEDGEMENT].

Refer to section [X] of this Guidance for details of what information is recommended to be included with an acknowledgement.

5.2 ASSESSMENT

We shall assess:

(a) if we consider there is *prima facie* evidence that a relevant wrongdoing might have occurred;

and

(b) whether the report concerns matters that fall within the scope of the matters for which we have been prescribed under the Act, as set out in section [x] of this policy.

We may, if required, make contact with you, in confidence, in order to seek further information or clarification regarding the matter(s) you have reported.

The Act requires that you shall cooperate with us in relation to the performance of our functions under the Act. This includes any functions we carry out as part of the assessment process.

We may find it necessary to differentiate the information contained in a report. It may be the case that our assessment finds that not all of the matters reported qualify as relevant wrongdoings under the Act or fall within the matters for which we have been prescribed under the Act. We may deal with different parts of a report differently according to what, in our opinion, is the most appropriate thing to do in each case.

We may decide that there is no *prima facie* evidence that a relevant wrongdoing may have occurred. If this decision is made, we will close the procedure and notify you in writing of this decision as soon as practicable and the reasons for it.

We may decide that there is prima facie evidence that a relevant wrongdoing may have occurred but that the relevant wrongdoing is clearly minor and does not require follow up. If this decision is made the procedure will be

If a prescribed person has a specific set of criteria for determining if a matter is minor (e.g. a financial threshold, a public interest test, etc.) this should be set out or linked to here, as appropriate.

closed and you will be notified in writing as soon as practicable of the decision and the reasons for it.

We may decide that all or part of a report is a repetitive report that does not contain any meaningful new information compared to a previous report. If this decision is made the procedure will be closed and you will be notified in writing as soon as practicable of the decision and the reasons for it.

We may decide that all or part of a report concerns matters which are not within the scope of matters for which we have been prescribed under the Act. If this decision is made, we will transmit your report – in whole or in part, as appropriate – to such other prescribed person or persons as we consider appropriate or, where, in our opinion, there is no such other prescribed person, to the Protected Disclosures Commissioner. You will be notified in writing as soon as practicable of the decision and the reasons for it.

5.3 FOLLOW-UP

Where, in our opinion, there is *prima facie* evidence that a relevant wrongdoing may have occurred, we shall decide on what further follow-up action is required, having regard to our statutory powers and functions and having regard to the nature and seriousness of the matter.

The Act requires that you shall cooperate with us in relation to the performance of our functions under the Act. This includes any functions we carry out as part of the follow-up process.

[INSERT OUTLINE DETAILS OF THE STATUTORY POWERS AND FUNCTIONS OF THE BODY].

The information provided here should set out in plain language what powers the prescribed person has as regards further follow-up action to determine the veracity of a report (e.g. powers of investigation, inspection, audit etc.) and what enforcement action can be taken if a wrongdoing has been found to have occurred (e.g. warning/improvement notices, closure orders, fines, prosecution etc.). If enforcement action requires referral to another body (e.g. An Garda Síochána or the DPP), this should also be set out here.

5.4 FEEDBACK

Feedback will be provided to you within a reasonable time period and no later than [INSERT TIME] after the initial acknowledgement of your report or, if no acknowledgement was sent, no later than [INSERT TIME]

The statutory maximum time within which feedback must be given is 3 months (per section 7A(1)(c) of the Act). A shorter time period can be set if required.

after your report was received. This time period applies whether your report was initially made directly to us or initially made to another prescribed person or the Protected Disclosures Commissioner and then transmitted to us.

In duly justified circumstances, the time period for the provision of feedback may be extended to [INSERT TIME], having regard to the nature and complexity of the report. We will inform you, in writing, of any decision to extend the feedback period as soon as practicable after the decision is made.

The statutory maximum time for an extension of the feedback period is 6 months, per section 7A(1)(c) of the Act. A shorter time period can be set if required.

You may request, in writing, that we provide further feedback at 3 month intervals until the process of follow-up is completed.

Prescribed persons can choose to provide feedback at 3 month intervals automatically as part of this policy. In such instance, it is suggested that the following text be added: "Notwithstanding your right to request further feedback, we will endeavour to provide further feedback to you at 3-month intervals until the process of follow-up is completed"

Any feedback we give is provided in confidence and should not be disclosed to anyone else other than:

(a) as part of the process of seeking legal advice in relation to your report from a solicitor or a barrister or a trade union official; or

(b) if required in order to make a further report through this or another reporting channel provided for under the Act.

Feedback will include information on the action taken or envisaged to be taken as follow-up to that report and also the reasons for such follow-up.

Feedback will not include any information that could prejudice the outcome of an investigation or any other action that might follow.

Feedback will not include any information relating to an identified or identifiable third party.

The requirement to provide feedback does not override any statutory or legal obligations that may apply as regards confidentiality and secrecy.

Any statutory or legal restrictions specific to the prescribed person that could restrict the nature and or scope of feedback given to the reporting person can be set out here, if appropriate.

If the follow-up process determines that no relevant wrongdoing has occurred, you will be informed of this in writing.

If no further action is required to be taken, you will be informed of this in writing.

We will give you information concerning the final outcome of any investigation triggered by your report, subject to any legal restrictions concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation.

Any legal restrictions specific to the prescribed person that could restrict the nature and or scope of information concerning final outcome that can be given to the reporting person should also be set out here.

6. CONFIDENTIALITY AND PROTECTION OF IDENTITY

[INSERT BODY NAME] is committed to protecting the identity of all workers who raise a concern under these procedures and to protecting the confidentiality of any information disclosed.

[INSERT MEASURES THE PRESCRIBED PERSON WILL TAKE TO PROTECT THE IDENTITY OF THE REPORTING PERSON AND OTHER THIRD PARTIES AND TO ENSURE CONFIDENTIALITY OF THE INFORMATION DISCLOSED].

Refer to section [X] of this Guidance for matters that should be taken into consideration in maintaining confidentiality.

Subject to the exceptions below, the identity of the reporting person or any information from which their identity may be directly or indirectly deduced will not be shared with anyone other than persons authorised to receive, handle or follow-up on reports under this policy without the reporting person's explicit consent.

The Protected Disclosures Act provides for certain exceptions where a reporting person's identity or information that could identify the reporting person can be disclosed with or without the reporting person's consent. There are:

(a) Where the disclosure is a necessary and proportionate obligation imposed by EU or national law in the context of investigations or judicial proceedings, including safeguarding the rights of defence of persons connected with the alleged wrongdoing;

(b) Where the person to whom the report was made or transmitted shows they took all reasonable steps to avoid disclosing the identity of the reporting person or any information that could identify the reporting person;

(c) Where the person to whom the report was made or transmitted reasonably believes disclosing the identity of the reporting person or information that could identify the reporting person is necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment; and

(d) Where the disclosure is otherwise required by law.

Where disclosure of your identity or information that could identify you is to be disclosed under one or more of these exceptions, you will be notified in writing in advance with reasons for the disclsoure, unless such notification would jeopardise:

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

Circumstances may arise where protection of identity is difficult or impossible – e.g. if the nature of the information you have disclosed means that you are easily identifiable. If this occurs, the risks and potential actions that could be taken to mitigate them will be outlined and discussed with you.

[INSERT DETAILS OF HOW A WORKER CAN MAKE A COMPLAINT IF THEY BELIEVE THEIR IDENTITY HAS BEEN UNLAWFULLY DISCLOSED BY THE PRESCRIBED PERSON].

Records will be kept of all reports, including anonymous reports, in accordance with applicable polices concerning record keeping, data protection and freedom of information. Please refer to Appendix B for further information.

7. PROTECTION FROM PENALISATION

The Act provides a range of statutory protections for workers who are penalised for making a protected disclosure.

Penalisation is any direct or indirect act or omission that occurs in a work-related context, which is prompted by the making of a protected disclosure and causes or may cause unjustified detriment to a worker.

Penalisation includes, but is not limited to:

(a) Suspension, layoff or dismissal;
(b) Demotion, loss of opportunity for promotion or withholding promotion;
(c) Transfer of duties, change of location of place of work, reduction in wages or change in working hours;

(d) The imposition or administering of any discipline, reprimand or other penalty (including a financial penalty);
(e) Coercion, intimidation, harassment or ostracism;
(f) Discrimination, disadvantage or unfair treatment;
(g) Injury, damage or loss;
(h) Threat of reprisal;
(i) Withholding of training;
(j) A negative performance assessment or employment reference;
(k) Failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanent employment;
(l) Failure to renew or early termination of a temporary employment contract;
(m) Harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income;
(n) Blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry;
(o) Early termination or cancellation of a contract for goods or services;
(p) Cancellation of a licence or permit; and
(q) Psychiatric or medical referrals.

The Act provides that a worker who suffers penalisation as a result of making a protected disclosure can make a claim for redress at either the Workplace Relations Commission or the courts, as appropriate.

A claim concerning penalisation or dismissal must be brought to the Workplace Relations Commission within 6 months of the date of the instance of penalisation or the date of dismissal to which the claim relates.

A claim for interim relief pending proceedings at the Workplace Relations Commission or the courts must be made to the Circuit Court within 21 days of the last date of penalisation or date of dismissal.

It is a criminal offence to penalise or threaten penalisation or to cause or permit any other person to penalise or threaten penalisation against any of the following:

- The reporting person;
- A facilitator (a person who assists the reporting person in the reporting process);

- A person connected to the reporting person, who could suffer retaliation in a work-related context, such as a colleague or a relative; or
- An entity the reporting person owns, works for or is otherwise connected with in a work-related context.

[INSERT BODY NAME] cannot determine if a report qualifies for protection under the Act not can it intervene or offer legal advice in any employment dispute or any other dispute concerning allegations of penalisation under the Act. Please refer to section 10 of this document on how to obtain further information and independent, confidential advice in relation to these statutory rights.

8. PROTECTION FROM LEGAL LIABILITY

In general, the Act provides that no civil legal action can succeed against you for making a protected disclosure. The one exception to this is in relation to defamation.

You can be sued for defamation but you are entitled to a defence of "qualified privilege". This means that it should be very difficult for a person to win a case against you if you can show you made a protected disclosure in accordance with the Act and did not act maliciously.

There is no other basis under which you can be sued if you have made a protected disclosure in accordance with the Act – e.g. for breach of confidentiality.

If you are prosecuted for disclosing information that is prohibited or restricted, it is a defence to show that, at the time of the alleged offence, you reasonably believed you were making a protected disclosure.

The Act also provides that any provision in any agreement is void insofar as it would:

- Prohibit or restrict the making of a protected disclosure;
- Exclude or limit any provision of the Act;
- Preclude a person from taking any proceedings under or by virtue of the Act; or
- Preclude a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.

Bear in mind that, if you make a report that you know is false, it is <u>not</u> a protected disclosure. You could be exposed to legal risks, such as being sued for defamation

or breach of confidentiality. You could also face criminal prosecution.

If you are in any doubt as to whether these protections apply to you, you should seek professional advice. Please refer to section 10 of this document on how to obtain further information and independent, confidential advice in this regard.

9. PROTECTION OF PERSONS CONCERNED

A "person concerned" is a person who is referred to in a report made under the Act as a person to whom the relevant wrongdoing is attributed or with whom that person is associated.

Persons concerned are entitled to protection of their identity for as long as any investigation triggered by the making of a report under this Policy is ongoing.

This protection of identity does not preclude the disclosure of said identity where [INSERT BODY NAME HERE] reasonably considers such disclosure is necessary for the purposes of the Act or where such disclosure is otherwise authorised or required by law.

Persons concerned have the right to take legal action against a person who knowingly makes a false report against them, if they suffer damage as a result of the false report.

10. SUPPORTS AND INFORMATION

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. The helpline can be contacted by INSERT CONTACT DETAILS HERE]

Up to date contact details for the TII helpline can be found at: https://transparency.ie/helpline

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 at: https://www.citizensinformation.ie/en/employment/enforcement-and-redress/protection-for-whistleblowers/

Information in relation to making a complaint of penalisation to the Workplace Relations Commission can be found at: https://www.workplacerelations.ie/en/

[INSERT DETAILS OF ANY OTHER SUPPORTS OR SERVICES, AS APPROPRIATE].

If available.

APPENDIX A – WHAT TO INCLUDE IN A DISCLOSURE

It is recommended that reports should contain at least the following information:

If a standard form is used for the making of reports, this can be inserted here instead or in addition to this section.

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

APPENDIX B – RECORD KEEPING, DATA PROTECTION AND FREEDOM OF INFORMATION

B.1 RECORD KEEPING

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

Where a report is made via [INSERT DETAILS OF RECORDED TELEPHONE LINE OR VOICE MESSAGING SYSTEM], [INSERT WHETHER A COPY OF THE RECORDING WILL BE KEPT OR WHETHER A TRANSCRIPT OF THE MESSAGE/CONVERSATION WILL BE MADE]. [IF A TRANSCRIPT IS MADE, INCLUDE THE FOLLOWING: The reporting person shall be afforded the opportunity to check rectify and agree this transcript.]

This text can be used if a recorded telephone line or voice messaging system is used for receiving oral reports.

Where a report is made via [INSERT DETAILS OF TELEPHONE LINE], 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.

This text can be used if a non-recorded telephone line is used for receiving oral reports.

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.

[INSERT DETAILS OF HOW RECORDS WILL BE KEPT OF ANY SUBSEQUENT FOLLOW-UP MEETINGS THAT ARISE (E.G. TO SEEK ADDITIONAL INFORMATION OR CLARIFICATION)].

B.2 DATA PROTECTION

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

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.

[INSERT DATA PRIVACY NOTICE]

B.3 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.

Appendix D: Ministerial reporting channel

D.1 Overview

Subject to certain conditions, as set out in section 8 of the Act, a worker who is or was employed by a public body can make a protected disclosure to a Minister or Minister of State responsible for the public body concerned.

Ministers are required to establish channels to receive protected disclosures and to publish information on how to access and use the reporting channel.

All reports received through the Ministerial reporting channel must be transmitted to the Protected Disclosures Commissioner who will ensure the report is sent to the most appropriate person to deal with the concern raised.

D.2 Conditions for reporting to a Minister

If a worker is or was employed in a public body, the worker may make a protected disclosure to a relevant Minister.[137] A "relevant Minister" is defined as a Minister with responsibility for the public body concerned in whom functions, whether statutory or otherwise, as respects the public body, are vested, or a Minister of State to whom any such function is delegated.[138] In general, this will be the Minister for the parent department of the public body.

In order to make a disclosure to a relevant Minister, the worker must reasonably believe that the information disclosed tends to show one or more relevant wrongdoings;[139] and one or more of the following must also apply:

I. The worker has previously made a disclosure of substantially the same information to their employer or a prescribed person, as the case may be, but no feedback has been provided to the worker in response to the disclosure within the period allowed, or, where feedback has been provided, the reporting person reasonably believes that there has been no follow-up or that there has been inadequate follow-up;[140]

II. The worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing reported;[141]

[137] Per section 8(2)(a) of the Act.

[138] Per the definition of "relevant Minister" at section 8(5) of the Act.

[139] Per section 5(2) of the Act.

[140] Per section 8(b)(i) of the Act.

[141] Per section 8(b)(ii) of the Act.

III. The worker reasonably believes that the disclosure contains information about a relevant wrongdoing that may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.[142]

D.3 Design of the Ministerial reporting channel

The following key principles should underpin the design of the Ministerial reporting channel:

- It should ensure that the identity of the reporting person and any persons named in a report is kept confidential to the greatest extent possible;
- The reporting channel should operate separately from the ordinary channels of communication to the Minister; and
- Reports should be transmitted to the Protected Disclosures Commissioner as soon as reasonably practicable.

In practical terms, the following is recommended:

- Overall responsibility for the correct functioning of the Ministerial channel lies with the Minister. Practically, it will be a matter for the Secretary General of the Department to determine – with the Minister's approval – how the channel should be best supported: i.e. through the Minister's private office or through a corporate services function.
- Each Department should have a set of written procedures for the handling of reports made to Ministers.
- Each Department should designate a person (or persons) to handle any reports received by Ministers. This can be the same person (or persons) designated to handle internal reports per section 9.4.1 of this Guidance.
- At a minimum, a dedicated secure email and/or postal address should be provided so as to ensure separation of any protected disclosures from general correspondence sent to the Minister. Other means of reporting, such as, for example, a secure web form, can also be considered as appropriate.
- Access to any reports received and any other records relating to reports received should be restricted to designated persons.
- Designated persons should be suitably trained to handle reports received via the Ministerial channel. Staff in the Minister's and Minister of State's private and constituency offices should have sufficient awareness training to be able to direct relevant queries, correspondence etc. to the designated person(s) as appropriate.
- Records of the numbers of reports received through the Ministerial channel must be kept by the designated person(s) in order to fulfil the annual reporting obligations under the Act.

[142] Per section 8(b)(iii) of the Act.

- A common set of procedures, designated persons, reporting channels and records can apply to Ministers and Ministers of State within a Department if required. Where a Minister of State has been assigned overall responsibility for a specific body (e.g. the Minister of State at the Office of Public Works), the Minister of State's office within that body should establish its own channels, procedures etc.

D.4 Operation of the Ministerial reporting channel

All reports – including all anonymous reports – received via the Ministerial reporting channel must be transmitted to the Protected Disclosures Commissioner within 10 calendar days of receipt.[143] Any supplementary correspondence received from the reporting person should also be transmitted.

The reporting channel must be appropriately monitored by the designated person(s) to ensure that all reports are transmitted within the statutory timeframe. If the statutory deadline is exceeded, the report must still be transmitted to the Commissioner. It is advised, however, that the reporting person be informed of the delay where possible.

Where an item of correspondence received via the dedicated channel is obviously not a protected disclosure or concerning a protected disclosure, there is no obligation on the designated person to transmit it to the Commissioner. If there is any doubt or uncertainty in this regard, the designated person should always transmit the report to the Commissioner.

In the event that a report is made outside of the formal Ministerial reporting channel (e.g. via ordinary correspondence channels to the Minister's private and/or constituency offices), the report should be transmitted as soon as possible to the designated person, who should handle it in the same manner as though it was sent through the dedicated channel.

Staff in Ministers' private and constituency offices who could potentially receive reports outside of the dedicated channel should be trained so that if an item of correspondence has the potential to be a protected disclosure, they should: (i) seek advice from the designated person(s) in this regard; and (ii) not disclose the identity of the reporting person or any persons named in said potential disclosure to anyone but the designated person.

There is no obligation under the Act for the Minister to acknowledge receipt of a report or to inform the reporting person their report has been transmitted to the Commissioner. Under the Act, the Commissioner must send an acknowledgement within 7 calendar days of receipt of the transmitted report, unless the reporting person requests otherwise or the Commissioner reasonably believes that to do so would jeopardise the protection of the reporting person's identity.[144]

It is, therefore, a matter for individual Departments and/or Minister's private offices to decide if, in accordance with applicable quality customer service policy, whether an acknowledgement should also issue from the Minister's office. However, an acknowledgement should **not** be sent if the reporting

[143] Per section 8(3)(a) of the Act.

[144] Per section 10D(1)(a) of the Act.

person requests that no acknowledgement be made or if the designated person reasonably believes that to issue an acknowledgment would jeopardise the protection of the reporting person's identity.[145]

Departments may consider it of benefit (in the interest of clarity and to manage expectations) to craft a standard acknowledgement which sets out that the disclosure has been received and that it will be transmitted to the Commissioner who will acknowledge receipt to the reporting person. Such a standard template could be used on a case by case basis as required.

There is no obligation under the Act for a Minister to make any determination as to whether the reporting person has complied with the requirements for reporting to a Minister under section 8(2) of the Act (or any of the other conditions necessary to qualify for protection under the Act). It is a matter for the reporting person to ensure that all of the conditions for reporting to a Minister under the Act have been met.

Once the report has been transmitted to the Commissioner, all obligations on the Minister under the Act have been discharged. Any further queries or correspondence from the reporting person following transmission should be referred to the Commissioner.

D.5 Information to be published

Section 8(4) of the Act requires each Minister of the Government to make available clear and easily accessible information on how to make a protected disclosure to a relevant Minister or Minister of State in accordance with the manner specified by section 8 of the Act. This information should be published on the Department's website and include the following:

- The conditions applying to the making of reports to a Minister (see Section C.2).
- The means by which the report can be made and the relevant email, postal address, web form etc. (as appropriate) for making the report.
- The information that should be included in any report (see Appendix A).
- That the report will be transmitted to the Protected Disclosures Commissioner within 10 calendar days and that following transmission any queries or further correspondence should be directed to the Commissioner.
- The confidentiality and data protection regime applicable to reports.
- Contact details for the Transparency International Ireland Speak Up helpline where reporting persons can seek advice – including legal advice – on making a protected disclosure.

It is also recommended that this information is included in the Department's internal reporting procedures.

[145] In the spirit of section 10D(1)(a) of the Act.

An Roinn Caiteachais Phoiblí
Sheachadadh PFN agus Athchóirithe
Department of Public Expenditure
NDP Delivery and Reform

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