

# **Office of the Ombudsman Policy on Protected Disclosure Reporting in the Workplace**

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## **1. Introduction**

The Protected Disclosures Act 2014 provides safeguards for workers who raise legitimate concerns regarding actual or potential wrongdoing in the workplace.

The Office of the Ombudsman is committed to addressing all legitimate concerns relating to wrongdoing as described in the Act in the workplace and to providing the necessary support for staff who raise genuine concerns. Under this policy, a worker is entitled to raise concerns or disclose information without fear of penalisation or threat of less favourable treatment, discrimination or disadvantage. Whether a disclosure is protected or not will depend on the way in which the disclosure is made.

The Office notes the enactment of the Protected Disclosures (Amendment) Act 2022, which has not yet been commenced. The Office is reviewing this policy and it will be updated in line with that legislation coming into force.

## **2. Key principles underlying policy**

A worker who has a reasonable belief that the information contained in his or her disclosure shows or tends to show that a wrongdoing covered by the policy has occurred, is occurring or is likely to occur will be protected against penalisation. Incidents of penalisation against a person making a report under this policy may be subject to action under the Civil Service Disciplinary Code.

The Act provides for a “stepped” disclosure regime in which a number of distinct channels (internal and external) are available.

## **3. To whom does this Policy apply?**

This policy applies to all workers at all levels in each of the bodies encompassed by the Office of the Ombudsman:- the Office of the Ombudsman; the Office of the Information Commission; the Standards in Public Office Commission; the Commission for Public Service Appointments; the Commissioner for Environmental Information; the Office of the Protected Disclosures Commissioner and, the Referendum Commission (when established), Contractors, consultants, agency staff and interns may also be deemed to be workers for the purposes of the Act and this Policy. Any reference in this Policy to the Office or the Office of the Ombudsman refers to the Office in its entirety including all of its component bodies.

#### **4. What type of disclosure is not covered by the Policy?**

The aim of this policy is to encourage and enable workers to raise a concern or disclose information internally rather than overlooking the problem or “blowing the whistle” externally. It does not cover workplace complaints or personal grievances. Procedures for dealing with grievance problems are available at <http://hr.per.gov.ie/grievance/>.

#### **5. What type of disclosure is covered by the policy?**

A disclosure (through the appropriate channel) of information, that has come to your attention in the course of your work, in the reasonable belief that one or more of the following types of “relevant wrongdoing” has occurred, is occurring or is likely to occur, is protected:

- A criminal offence
- A failure to comply with a legal obligation
- A miscarriage of justice
- The endangering of an individual’s health or safety
- Damage to the environment
- Unlawful or otherwise improper use of funds or resources of a public body or of other public money
- An act or omission by or on behalf of a public body which is oppressive, discriminatory or grossly negligent or which constitutes gross mismanagement
- Concealment or destruction of evidence relating to the above

#### **6. Safeguards against penalisation**

A worker who makes a disclosure and has a reasonable belief of the relevant wrongdoing will not be penalised by this organisation, even if the concerns or disclosure turn out to be unfounded.

Penalisation includes suspension/dismissal, disciplinary action, demotion, discrimination, threats or other unfavourable treatment arising from the disclosure on the basis of a reasonable belief for doing so. If you believe that you are being subjected to penalisation as a result of making a disclosure under this Policy you should inform your manager or a senior manager immediately.

Workers who penalise or retaliate against those who have raised concerns under this policy will be subjected to disciplinary action.

Workers who make a disclosure are not expected to prove the truth of an allegation. However, they must have a reasonable belief that there are grounds for their concern. The policy does not cover a disclosure where the worker knowingly conveys false, misleading, frivolous or vexatious information. If it transpires that a worker makes a disclosure, which they know to be false or do

not believe to be true, the Office of the Ombudsman may take disciplinary or other appropriate action. The Policy does not relate to disclosures of wrongdoing if the matter is one, which it is the function of the worker or the Office to detect, investigate or prosecute.

A disclosure should also be made where there has been a breach of Civil Service policy such that harm may be arising to others or to the Organisation.

## **7. How to raise a concern or make a disclosure in this Office**

Workers may wish to discuss their concern with their immediate line manager or supervisor in the first instance. However, if a worker feels that this is not appropriate, for example given the seriousness or sensitivity of the issues involved, then you should approach a senior manager directly. If the complaint concerns a senior manager, then you can approach the Personnel Officer in the first instance. If it involves the Finance or HR areas, the worker can contact the Director General.

Concerns may be raised verbally or in writing. Should you raise a concern verbally we will keep a written record of the conversation and provide you with a copy. Ideally, a disclosure should be made in writing and should give as much factual information as possible. Even if you raise a matter verbally, you may be asked to put the details in writing at a later date.

A concern may be raised anonymously. However, on a practical level it may be difficult to investigate. Workers are encouraged to put their name to a disclosure, with our assurance of confidentiality where possible, in order to facilitate appropriate follow-up. This will make it easier for us to assess the disclosure and take appropriate action including an investigation if necessary.

## **8. How the Office will deal with your disclosure**

Once a concern has been raised with a relevant manager (line manager, Senior, Personnel Officer or Director General), whether verbally or in writing, the relevant manager will meet with you to discuss the matter on a strictly confidential basis. It is at this point that the relevant manager will need to clarify if the concern is appropriate to this procedure or is a matter more appropriate to another procedure, for example the Grievance procedure. You can choose whether you want to be accompanied by a colleague or Union Representative.

At this stage, having clarified that the matter is appropriate to this procedure, an initial assessment of the facts will be carried out to examine what actions we need to take to deal with the matter. This may involve simply clarifying certain matters, clearing up misunderstandings or resolving the matter by agreed action without the need for an investigation.

If an investigation is warranted, it will be conducted fairly and objectively. The form and scope of the investigation will depend on the subject matter of the disclosure. It may be that the disclosure is such that it is required to be referred immediately to the appropriate authorities or requires some other immediate action on our part.

We will do our best to keep you informed of the steps being taken by us in response to your disclosure and we will endeavour to keep you informed of how we propose to deal with the matter and any outcomes. However, it is important to note that sometimes the need for confidentiality and legal considerations will prevent us from giving you specific details of an investigation.

## **9. How to raise a concern or make a disclosure outside of this Office**

The Act also makes provision for a protected disclosure by a worker to a prescribed person where the worker reasonably believes that the relevant wrongdoing falls within the description of the matters in respect of which the person is prescribed. The worker must also reasonably believe that the information contained in the disclosure and any allegation contained in it is “substantially true”. This is a higher threshold than for an internal disclosure. The list of regulators designated as prescribed persons is contained in S.I. 367/2020. The list is also maintained by the Department of Public Expenditure and Reform and can be found at <https://www.gov.ie/en/collection/41798-protected-disclosures-whistleblowing-list-of-prescribed-persons/>

As it happens, two such prescribed persons are located in this Office. They are:

### **The Secretary to the Standards in Public Office Commission (SIPOC)**

(a) All matters relating to the supervision of the Ethics in Public Office Acts 1995 and 2001 in so far as they apply to specified persons and to members of the Oireachtas who are not office holders, within the meaning of those Acts, including investigations and reports in relation to possible contraventions of those Acts.

(b) All matters relating to the supervision of the Electoral Acts 1992 to 2019 in regard to-

(i) the disclosure of donations to political parties, members of the Oireachtas, members of the European Parliament, and candidates at elections to Dáil Éireann, Seanad Éireann and the European Parliament,

(ii) the obligations of third parties,

(iii) the obligations of corporate donors,

(iv) the monitoring of limitations on expenditure by election candidates and political parties, and

(v) the expenditure of Exchequer Funding received by qualified political parties.

(c) All matters relating to the supervision of the Ministerial and Parliamentary Offices Act 1938 with regard to the expenditure of funding (Parliamentary Activities Allowance) received by the parliamentary leaders of qualifying parties and by independent members of the Oireachtas.

## **The Director of the Commission for Public Service Appointments (CPSA)**

All matters relating to the setting of standards for recruitment and selection for public service appointments including the monitoring and auditing of public sector recruitment and selection processes.

### **10. Disclosure to the Minister**

A worker who is employed in a public body can also avail of the protections under the Act if he or she makes a disclosure to the Minister who has a statutory function in relation to the public body. That means that in relation to this Office a disclosure can be made to the Minister for Public Expenditure and Reform.

### **11. Disclosure to other persons**

A worker may still benefit from the protections under the Act even if a disclosure is not made in one of the aforementioned ways provided the following conditions are met:

- The worker must have a reasonable belief in the substantial truth of the information/allegation
- The disclosure must not be made for personal gain
- It must be reasonable for the worker to make the disclosure having regard to
  - the identity of the disclosee
  - the seriousness of the relevant wrongdoing
  - whether the relevant wrongdoing is continuing or likely to occur in the future
  - whether there was a previous disclosure to the worker's employer and the expected outcome
  - whether the employer's procedure was complied with by the worker in making the previous disclosure

One of the following preconditions must also be satisfied:

- Worker must have reasonable belief in penalisation by employer if another channel is used  
Reasonable belief that evidence will be destroyed if employer channel is used and there is no "prescribed person"
- Previous disclosure of substantially same information to employer, or prescribed person or minister, or
- Relevant wrongdoing is of an exceptionally serious nature

## **12. Confidentiality**

The Office of the Ombudsman will take all reasonable steps to treat disclosures made through this policy in a confidential and sensitive manner. The Office of the Ombudsman will not disclose the worker's identity without their consent, unless it is required by law or necessary for the effective investigation of the relevant wrongdoing. Every effort will be made to notify the worker where his or her identity may be disclosed.

## **13. Records**

Records of concerns raised, including the outcome, will be maintained for a minimum of three years after the closure of the case by the Personnel Officer. These records will be maintained in a confidential and secure environment. A summary report on all protected disclosures will be published on the recipient Office's website.

## **14. Training and Awareness**

The Policy is available to view on both the Office's staff intranet page and also the respective Office websites. It is covered during the staff induction process and during the quarterly Risk and Governance meetings with the members of the Management Advisory Committee. A staff awareness session is being developed to cover the amendments introduced by the Protected Disclosures (Amendment) Act 2022 and how they will impact staff and the prescribed persons in SIPO and CPSA. The sessions will also raise awareness of the Office's new role as the Protected Disclosures Commissioner.

## **15. Review of Policy**

The policy will be reviewed at minimum intervals of two years or when required by the Office's Management Advisory Committee [the next review period will be August 2024].