



Protected Disclosures

Procedures for the receipt and management
of Protected Disclosures in the HSE

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1. INTRODUCTION

- 1.1 The Health Service Executive (“HSE”) is committed to maintaining the highest possible standards of care for patients and clients, to providing workers with a healthy and safe working environment and to complying with its legal obligations.
- 1.2 Recently, the overarching piece of legislation concerning the protection of workers who raise concerns, The Protected Disclosures Act 2014 (“the Act”), was amended by the Protected Disclosures (Amendment) Act 2022. The amended Act commenced on 01 January 2023. The amended Act makes a number of key changes including widening the persons that can make a protected disclosure and the protections afforded to a reporting person and others.
- 1.3 The HSE is carrying out an in depth review of its policies and procedures concerning protected disclosures and will publish these in due course. In the interim, the procedures outlined in this document represent an update to the HSE Protected Disclosures Procedures to reflect the amended Act and the DPER ‘Protected Disclosures Act: Interim guidance for public bodies and prescribed persons’

2. PROTECTED DISCLOSURES PROCEDURES

- 2.1 These Procedures seek to promote a culture of openness and accountability in which protected disclosures, as defined in section 4 below, can be made without fear of penalisation. The HSE has in place a range of employee supports including employee assistance schemes and encourages disclosers and others affected to avail of these supports if required.
- 2.2 The HSE operates its ‘whistleblowing’ process under two sets of legislation and two sets of Procedures related to protected disclosures. These are the Health Act 2004 (as amended in 2007) and the Protected Disclosures Act 2014. Two separate sets of Procedures also operate in relation to these sets of legislation ([link](#)). While the Protected Disclosures Act 2014 introduced a number of amendments in relation to the Health Act 2004, the Health Act also remains in operation.
- 2.3 There are a number of differences between the two Acts. Key differences relate to:
 - (a) Who can make a disclosure and to whom: the Health Act provides for disclosures of relevant wrongdoings to be made to an Authorised Person by employees of the HSE and of bodies funded under sections 38 and 39 of the Health Act. The Protected Disclosures Act provides for the making of disclosures by “workers” as defined by the Protected Disclosures Act to specified recipients.
 - (b) The list of relevant wrongdoings differs between the Acts.
 - (c) There is a “good faith” provision in the Health Act.
 - (d) Motivation is not relevant when the HSE is dealing with a disclosure under the Protected Disclosures Act.
- 2.4 These Procedures apply to protected disclosures made in accordance with the Protected Disclosures Act 2014 (as amended) (the “Act”).

- 2.5 The Act creates the role of the Designated Person(s). The role of the Designated Person is to manage the internal reporting channels in a secure manner and ensure the confidentiality of reporting persons. The Designated Person is responsible for carrying out the initial assessment of any report received and ensuring appropriate follow up. The Designated Person must also provide feedback to the reporting person. Pending further review of these Procedures, the HSE Designated Person is the Assistant National Director, Governance and Compliance (the Authorised Person for the Health Act 2004).
- 2.6 Prior to making a disclosure workers should give consideration to the perceived relevant wrongdoings (see section 4.6 below) in relation to which they wish to raise concerns and also to the issue of whether or not they wish to have their identity protected. It would be preferable that workers raise their concerns directly with the HSE rather than through third parties. To avoid duplication it would be desirable also if workers who raise concerns with more than one person or organisation would advise the Designated Person of this when raising the concern.
- 2.7 In general terms concerns should be raised in writing and on the prescribed form. Where concerns are being raised verbally they will need to be documented. There are limitations to the ability to investigate anonymous disclosures. Upon receipt of a disclosure the HSE will follow the processes set out below in relation to assessment, appropriate action, examination or investigation and/or referral to relevant external parties if required. While the HSE recognises that workers who make disclosures may have a significant interest in relation to all processes related to same, it is the responsibility of the HSE to deal with information provided as appropriate. While the Designated Person will provide feedback to the discloser as set out below, the content of the feedback may be limited by the nature and actions proposed particularly if they relate to other individuals.
- 2.8 This document aims to clarify what constitutes a protected disclosure, how protected disclosures can be made and to whom. It will concentrate on disclosures made to the HSE but will provide information also on the other persons/agencies to whom a protected disclosure can be made and the circumstances in which such disclosure may be made. It also provides information in relation to the protections available to workers who make a disclosure.
- 2.9 In line with Section 6 of the Act, the HSE is required to develop Procedures for HSE workers (as defined) to make protected disclosures, and these are set out below. .

3. OBJECTIVES OF THESE PROCEDURES

- 3.1 The principal objectives of these Procedures are to:
- (a) encourage workers (as defined) to make protected disclosures internally and at the earliest opportunity; and
 - (b) provide protection to workers where such disclosures are made.

- 3.2 These Procedures are designed to ensure that all protected disclosures will be the subject of appropriate actions as outlined later in this document and will be dealt with as soon as possible in the circumstances.
- 3.3 These Procedures set out the mechanism for workers (as defined below) to make protected disclosures internally to the HSE in the confidence that:
- (a) their identity will be protected by the recipient and any person to whom the protected disclosure is referred, in accordance with the Act;
 - (b) their disclosure will be dealt with appropriately; and
 - (c) they will be entitled to the protections set out in the Act and will not, for example, be penalised as a consequence of making a protected disclosure.

4. RESPONSIBILITY

- 4.1 These Procedures were drafted through a consultation process which involved nominees from within the HSE with the support of legal advisers. They will be subject to ongoing review. Overall responsibility for these Procedures rests with National Director Governance & Risk, Office of the Chief Strategy Officer. Day-to-day responsibility for the ongoing review of the Procedures is delegated to the HSE Assistant National Director, Governance & Compliance, Governance & Risk, Office of the Chief Strategy Officer .

5. TO WHOM DO THESE PROCEDURES APPLY?

- 5.1 These Procedures apply to a “worker”, as defined in the Act. A “worker”, for the purposes of these Procedures, is an individual who acquired information on relevant wrongdoings in a work-related context and who is or was:
- (a) an employee;
 - (b) an independent contractor to the HSE, whether or not the work/services were provided personally by the individual to the HSE, or, otherwise;
 - (c) an agency worker;
 - (d) provided with work experience under a training course or programme or with training for employment (or with both) otherwise than under an employment contract;
 - (e) A shareholder of an undertaking;¹
 - (f) a member of the administrative, management or supervisory body of the HSE including non-executive members; or
 - (g) a volunteer.
 - (h) A worker also includes an individual who acquired information on a relevant wrongdoing during a recruitment process

¹ This is unlikely to be relevant for workers making disclosures internally to the HSE

- (i) An individual who acquired information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process).

6. WHAT IS A PROTECTED DISCLOSURE?

- 6.1.1 For the purposes of the Act and these Procedures, a protected disclosure is a disclosure of relevant information which, in the reasonable belief of the 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 set out in the Act.
- 6.1.2 It is immaterial whether the relevant wrongdoing occurred, occurs or would occur in Ireland or outside Ireland. It is also immaterial whether the law applying to the relevant wrongdoing is Irish law or the law of any other country. This may have relevance for a HSE worker where, for example, the worker is involved in the administration of treatment to patients availing of treatment or services abroad and the worker becomes aware of relevant information tending to show a relevant wrongdoing in that regard.

7. WHAT IS RELEVANT INFORMATION?

- 7.1.1 In order for a disclosure to be protected under the Act and covered by these Procedures, it should convey relevant information which in the worker's reasonable belief tends to show a relevant wrongdoing i.e. facts about someone or something, as opposed to simply conveying a generalised allegation, not founded on any facts. For example, if a worker makes the following disclosure to the HSE "*Yesterday, used sharps were left lying around Bed A on Ward B of the hospital*", this would be likely to qualify as a disclosure of information, and is information that the HSE can act upon. However, a disclosure to the effect that "*The HSE is not complying with its health and safety obligations*" would be unlikely, without further detail, to qualify as a disclosure of information and is also very difficult for the HSE to act upon.
- 7.1.2 Workers are not required or entitled to conduct an investigation/enquiry to attempt to obtain proof that a relevant wrongdoing has occurred, is occurring or is likely to occur. Workers who have formed a reasonable belief of wrongdoing should solely disclose information which tends to show such wrongdoing, in accordance with these Procedures.

8. WHAT IS A REASONABLE BELIEF?

- 8.1.1 It is essential for the worker to have a reasonable belief that the information which she/he discloses tends to show one or more of the relevant wrongdoings set out in paragraph 4.6 below. It is not essential, however, for the reasonable belief to be correct. All that is required is that the worker's belief was founded on reasonable grounds, regardless of whether the belief is mistaken or not. For example, it may be reasonable for a worker to believe, based on what she/he knows and has witnessed, that a relevant wrongdoing has occurred because she/he is not aware of all relevant facts.
- 8.1.2 No worker will be deprived of the protections set out in the Act, including protection from penalisation, if it transpires that a relevant wrongdoing did not occur, is not occurring or is not likely to occur, provided that she/he had a reasonable belief, as set out above.

9. WHAT ARE RELEVANT WRONGDOINGS

9.1.1 The following are relevant wrongdoings for the purposes of these Procedures:

- (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 legislation (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 paragraphs (a) to (h) above 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.

9.1.2 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.

10. WHAT IS A WORK RELATED CONTEXT

For the disclosure of information to be protected and covered by these Procedures, it must come to the worker's attention 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 discloser acquires information concerning a relevant wrongdoing, and within which the discloser could suffer penalisation for reporting the information.

10.1 However, the Act does state that a matter is not a relevant wrongdoing if it is a matter which it is the function of the worker or the worker's employer to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of the employer.

10.2 The Act provides that legal advisors are excluded from its protections, where their disclosure involves information in respect of which a claim to legal professional

privilege could be maintained in legal proceedings and it is made by a person to whom the information was disclosed in the course of obtaining legal advice.

11. MAKING A DISCLOSURE IN ACCORDANCE WITH THE ACT

11.1 A worker must make a disclosure in the manner set out in the Act to be entitled to the protections of the Act. Different standards apply depending on the person or body to whom the worker makes a protected disclosure. A protected disclosure can be made in the following ways:

(a) To the HSE

The HSE encourages all workers to make disclosures internally to the HSE and to use these Procedures. Such disclosures will be taken seriously and the worker making a protected disclosure, as defined by and in accordance with the Act, will be entitled to the protections set out in the Act. Workers should make disclosures to the HSE accordance with section 12 below.

(b) Disclosure outside the HSE

A worker may make a disclosure to persons other than the HSE in certain circumstances. Different requirements need to be met in different cases, as set out at (a) to (e) below:

(c) Other responsible person

Where the worker reasonably believes that the relevant wrongdoing which the disclosure tends to show relates solely or mainly to the conduct of a person other than the worker's employer or something for which that other person has legal responsibility, then the worker may make a disclosure to that other person. For example, a worker employed or engaged by a section 38/39 organisation may make a disclosure to the HSE where that individual reasonably believes that the wrongdoing relates solely or mainly to the conduct of the HSE or to something for which the HSE has legal responsibility.

(d) A prescribed person

The Minister may prescribe by order certain persons to receive disclosures of relevant wrongdoings relating to specific matters ("**prescribed persons**"). These prescribed persons include the heads or senior officials of a range of statutory bodies. Further details in relation to the prescribed person are contained in statutory instruments which are available on the Protected Disclosures web page ([link](#)).

A worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is a prescribed person. In the case of such a disclosure, the worker must also reasonably believe that the information disclosed, and any allegation contained in it, are substantially true.

Prescribed persons must make available information on how to make a disclosure to the prescribed person, and workers who wish to make such a disclosure should follow any procedures which the prescribed person has in place for doing so.

(e) A Minister of the Government

If a worker is or was employed in a public body, she/he may make a disclosure to a Minister with responsibility for the HSE in whom any functions related to the HSE, whether statutory or otherwise, are vested. Disclosures may also be made to a Minister of State to whom any such function is delegated. Accordingly, workers covered by these Procedures may make a disclosure to the Minister for Health, the Minister for Finance or the Minister for Public Expenditure and Reform, and any other relevant Minister.

In order to make a disclosure to a Minister, the worker must also meet **one** of the following conditions:

- (i) the worker has previously made a disclosure of substantially the same information to the HSE, 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 worker reasonably believes that there has been no follow-up or that there has been inadequate follow-up; or
- (ii) the worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing reported; or
- (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.

Disclosures received by Ministers are required to be forwarded to the Protected Disclosures Commissioner by the Minister, without having been considered by the Minister.

(f) The Protected Disclosures Commissioner

A disclosure may be made directly to the Protected Disclosures Commissioner (the "Commissioner"). As with a disclosure to a prescribed person, the worker must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true.

(g) A legal adviser

A disclosure made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body (as defined in the Act) is a protected disclosure.

(h) Alternative external disclosures (in circumstances as outlined below)

It is preferable for workers to make disclosures to the HSE in the first instance or, if appropriate, to use one of the disclosure options at (a) to (e) above. It will rarely be appropriate to make an alternative external disclosure where the disclosure could be dealt with through one of the other disclosure options above. There are stringent requirements for alternative external disclosures to qualify as protected disclosures under the Act.

The protections will only be available if (along with the other requirements of the definition of a protected disclosure as noted above) the worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; **AND** at least one of the following additional conditions at (i) to (iv) are met:

- (i) the worker has previously made a disclosure of substantially the same information to the employer, another responsible person, a prescribed person or a Minister, but no appropriate action was taken in response to the disclosure within the period specified by the Act; 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 she/he would be penalised if he/she made the disclosure to a prescribed person or a Minister; or
- (iv) the worker reasonably believes if she/he were to make a disclosure to a prescribed person or a 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

12. PENALISATION (INCLUDING DISMISSAL AND DETRIMENT)

12.1 The Act provides specific remedies for workers who are penalised for making a protected disclosure. Penalisation means any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a disclosure and causes or may cause unjustified detriment to a worker and includes:

- suspension, lay-off, or dismissal
- demotion, loss of opportunity for promotion or withholding promotion
- transfer of duties, change of location of place of work, reduction in wages or change in working hours
- the imposition or administering or 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

This list is not exhaustive, and any form of penalisation is prohibited, even if not listed above.

- 12.2 Penalisation of workers who make a disclosure will not be tolerated. All reasonable steps will be taken to protect workers from penalisation. Workers who consider that they have experienced any act of penalisation should notify their line manager or, where this is not appropriate or possible, another senior manager and the notification will be investigated and appropriate action taken where necessary (which may include disciplinary action against individuals).
- 12.3 Workers also have recourse to the Workplace Relations Commission if they believe that they have been penalised as a direct result of having made a protected disclosure. Such a claim must be made to the Workplace Relations Commission within 6 months of the penalisation occurring. Workers may also apply to the Circuit Court for interim relief in cases of penalisation, which must be made within 21 days of the last instance of penalisation. Extensions to timescales may be sought in specific circumstances.
- 12.4 A worker is also entitled to bring legal action against a person who causes detriment to that worker because that worker, or a third party, has made a protected disclosure. A detriment in this context includes any of the examples of the acts or omissions referred to above in relation to penalisation.

13. CONFIDENTIALITY / PROTECTION OF IDENTITY

- 13.1 The Act provides that the designated person, any other person in the HSE who receives a disclosure, or anyone else with whom a disclosure is shared to allow them to carry out their functions in relation to the disclosure, cannot disclose the identity of the discloser (or any information from which the identity of the discloser may be directly or indirectly deduced) to anyone else without the explicit consent of the discloser.

- 13.2 The Act allows the identity of the discloser to be disclosed in certain circumstances, even where the discloser does not consent to this. These circumstances are where:
- (i) the disclosure is to the Designated Person or such persons as the person reasonably considers may be necessary for the purposes of the receipt or transmission of, or follow-up on, reports as required under the Act (this would include disclosure to the Designated Person and other staff involved in the assessment of the disclosure);
 - (ii) the disclosure is a necessary and proportionate obligation imposed by EU or Irish law in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned;
 - (iii) the person to whom the report was made or transmitted shows that he or she took all reasonable steps to avoid so disclosing the identity of the discloser or any such information that might reveal the identity of the discloser;
 - (iv) the person to whom the report was made or transmitted reasonably believes that disclosing the identity of the discloser or any such information is necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment, or
- OR**
- (v) the disclosure is otherwise required by law.
- 13.3 Where action is to be taken following a disclosure, except in exceptional cases, the disclosure recipient should contact the discloser and, where possible, gain the informed consent of the discloser, prior to any action being taken that could identify her/him.
- 13.4 Where it is decided that it is necessary to disclose the identity of the discloser or information that may or will disclose the identity of the discloser, in the cases referred to at (ii) or (iv) above, the discloser will be informed of this decision in advance of the disclosure, and the reasons for the disclosure, unless the notification would jeopardise any of the following:
- (i) the effective investigation of the relevant wrongdoing concerned;
 - (ii) the prevention of serious risk to the security of the State, public health, public safety or the environment; or
 - (iii) the prevention of crime or the prosecution of a criminal offence.
- 13.5 The discloser may request a review of this decision and a review should be carried out, where practicable, and in accordance with section 15 below.
- 13.6 All reasonable steps will be taken to protect the identity of the discloser, and her/his identity will not be disclosed, except as set out above. Workers who are concerned that their identity is not being protected should notify the Designated Person or a senior manager for the service concerned. Such notifications will be investigated and appropriate action taken where necessary.

- 13.7 Any attempt to identify the discloser should not be made by persons within the HSE to whom the identity has not been revealed as part of the receipt and follow-up of the report of the disclosure. If such attempts are made, whether successful or not, this will be dealt with under the HSE's disciplinary process.
- 13.8 The HSE has put in place measures to protect the identity of disclosers, including;
- Secure systems of disclosure receipt via phone, email and post with access limited to the Office of the Authorised Person;
 - Where appropriate, redacting of identifiable information prior to any investigation;
 - Password protection on documentation shared with [Commissioning Managers]
 - Storage and retention of disclosures within the protected disclosures secure fileshare in Office of the Authorised Person

14. ANONYMOUS DISCLOSURES

- 14.1 There is a distinction between anonymous disclosures (where identity is withheld by the discloser) and confidential disclosures (where identity is protected by the recipient). Anonymous disclosures made by workers are not excluded from the protection of the Act and the HSE will investigate such disclosures to the extent that this is possible in the circumstances.
- 14.2 The HSE encourages workers to provide as much information as possible in relation to the alleged relevant wrongdoing. This will enhance the HSE's ability to engage with the worker and seek further information, as required, and to thereby investigate the alleged relevant wrongdoing as effectively and efficiently as possible. Workers should note that in many instances, it may be difficult or impossible for the HSE to investigate a disclosure unless the worker is prepared to identify herself/himself. This is because the HSE may not be able to investigate a disclosure properly or at all without obtaining further information from the worker making the disclosure. Where the worker withholds his/her identity, it will not be possible for the HSE to seek and obtain such further information as may be required to conduct an investigation in relation to the alleged relevant wrongdoing, thereby inhibiting or preventing the HSE from conducting an investigation.
- 14.3 Workers should further note that important aspects of these Procedures (such as providing feedback and protecting a discloser from penalisation) may be difficult or impossible to apply unless workers identify themselves. Furthermore, workers cannot obtain redress under the Act without identifying themselves as part of the process of seeking redress.

15. INTERPERSONAL GRIEVANCES AND PROTECTED DISCLOSURES

- 15.1 The Act is intended to deal with disclosures of relevant wrongdoings. A matter concerning interpersonal grievances exclusively affecting a worker, namely

grievances about interpersonal conflicts involving the worker and another worker, or a matter concerning a complaint by a worker (the reporting person) to, or about, the employer which concerns the worker exclusively, is not a relevant wrongdoing for the purposes of the Act.

- 15.2 These Procedures are not intended to act as a substitute for normal day to day operational reporting or other internal employment Procedures. Interpersonal grievances are generally dealt with under the HSE's Grievance or Dignity at Work procedures.
- 15.3 If a complaint is made of penalisation contrary to the Act, such complaint will be dealt with under these Procedures so as to ensure that the obligation to protect the identity of the discloser (as set out in section 7 above) is complied with.

16. MOTIVATION

- 16.1 The motivation of the worker for making a disclosure is irrelevant to whether or not it is a disclosure protected by the Act. All disclosures will be dealt with regardless of the worker's motivation for making the disclosure, and the worker will be protected so long as the worker reasonably believes that the information disclosed tended to show a relevant wrongdoing.
- 16.2 However, a disclosure made in the absence of a reasonable belief (or other relevant standard specified in paragraph 5 above) will not attract the protections of the Act and may result in disciplinary action against the discloser. In addition, disclosure of a wrongdoing does not confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing.

17. HOW TO MAKE A PROTECTED DISCLOSURE TO THE HSE

- 17.1 A worker who wishes to make a protected disclosure as defined in these Procedures to the HSE, should address such disclosure by way of the following dedicated, confidential secure channels:
- by email: protected.disclosures@hse.ie
 - [by phone: 01 635 2202](tel:016352202)
 - by post: HSE Office of the Authorised Person, Dr Steevens' Hospital, Dublin 8, D08 W2A8
- 17.2 The HSE recognises that workers may not always feel able to do so, for whatever reason. If this is the case, disclosures can also be made to Internal Audit.
- 17.3 Workers are encouraged to make protected disclosures in writing by using the Protected Disclosures Reporting Form or using the information contained in the form, and sending it to the email address above. Workers who make a disclosure otherwise than by using the Form are encouraged to indicate that the disclosure is being made as a protected disclosure under the Act. When a disclosure, which appears to be a protected disclosure, is made verbally it should be documented by the recipient, either by way of a digital recording with the discloser's consent in

advance, or by way of accurate minutes. Where practicable, the discloser will be asked to check and confirm by way of signature the contents of the minutes or transcript of the information provided to ensure that they are accurate.

- 17.4 The Act does not make any provision in relation to the withdrawal of a disclosure. If the information provided tends to show a relevant wrongdoing then the HSE may decide to continue to examine/investigate this in so far as is possible in circumstances where a discloser chooses to withdraw from the process.

18. ACKNOWLEDGEMENT

- 18.1 When a disclosure of an alleged relevant wrongdoing is made, the HSE will acknowledge receipt of the disclosure within 7 calendar days of receipt. The acknowledgement will also provide further information about the protected disclosures process and enclose these Procedures; provide information in relation to the protection of identity of the discloser and protection from penalisation; and provide information in relation to follow-up and feedback.

19. FOLLOW-UP INITIAL ASSESSMENT

- 19.1 An initial assessment will be undertaken by the Designated Person (or designate) under these Procedures. This initial assessment will involve an assessment of the disclosure to seek to determine if a relevant wrongdoing may have occurred and whether or not it should be treated as a potential protected disclosure.
- 19.2 If it is unclear whether the disclosure qualifies as a protected disclosure, the Designated Person should treat the information as a protected disclosure (and protect the identity of the discloser, subject to section 7 above) until satisfied that the information is not a protected disclosure.
- 19.3 If following the initial assessment, the Designated Person decides that there is no *prima facie* evidence that a relevant wrongdoing may have occurred or that it relates solely to a complaint exclusively affecting the worker, the process is closed, or referred to another applicable procedure, such as the Grievance Procedure. The discloser will be informed in writing of this action as soon as practicable, and the reasons for doing so.
- 19.4 It may be necessary, as part of this assessment process, to differentiate between protected disclosures and interpersonal grievances, but there may also be cases where the information provided may involve an interpersonal grievance and a protected disclosure. In these circumstances, it may be necessary to separate the different elements of the grievance/disclosure and determine whether any specific disclosure of information relating to a relevant wrongdoing has taken place and how it should be dealt with in the circumstances.

20. FURTHER ACTION

- 20.1 If after the initial assessment, the Designated Person decides there is *prima facie* evidence that a relevant wrongdoing may have occurred, it will be referred to the relevant manager for appropriate action. This manager will be responsible for

arranging for the matter to be examined or investigated, or for other appropriate action to be taken, and should be guided by the appropriate HSE policies in this regard, and any relevant requirements of the Act.

- 20.2 It is important to note that some matters may be of such seriousness that an 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.
- 20.3 If, after an appropriate examination or investigation has been undertaken, it is determined that wrongdoing has occurred then the findings will be addressed and appropriate action will be taken where necessary (general process is outlined in Appendix 1 attached).

21. FEEDBACK

- 21.1 Feedback will be provided to the discloser within a reasonable period, being not more than three months of the acknowledgement of receipt of the disclosure. If the discloser requests in writing to the Designated Person that they wish to receive further feedback after this, then further feedback will be provided at three month intervals until the conclusion of the process.
- 21.2 Feedback will consist of information on the action taken or envisaged as follow-up and the reasons for this follow-up. Follow-up includes the assessment and investigation of the disclosure and actions taken to address the wrongdoing.
- 21.3 As part of the feedback, the discloser will be kept informed, to an appropriate extent, of the progress of any investigation and its likely timescale. However, sometimes the need for confidentiality may prevent the HSE from giving the discloser specific details of an investigation or any other action taken as a result of a protected disclosure, and no information will be communicated that could prejudice the outcome of an investigation or any action that might ensue (e.g. disciplinary or other legal action, including prosecution). For example the HSE will not inform the discloser of the progress or outcome of any disciplinary process involving another worker. Such information is confidential between the HSE and the person the subject of the disciplinary process.
- 21.4 Where appropriate, an outline of the final outcome of any investigations triggered by the report of the disclosure will be communicated in writing to the discloser, but this will be subject to legal restrictions applying concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation. The full investigation report may not be provided to the discloser.
- 21.5 Any feedback given is provided in confidence as part of the reporting process and the process of the HSE addressing the disclosure. The feedback should not be disclosed further by the discloser, 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.

22. PROTECTION OF RIGHTS OF RESPONDENTS

- 22.1 Where, as part of a protected disclosure, an allegation is made against an individual (the respondent), the principles of natural justice and fair procedures will be complied with, as appropriate.

23. DISCIPLINARY RECORD OF DISCLOSER AND OTHER RELATED MATTERS

- 23.1 Where a worker makes a disclosure of alleged wrongdoing it will be given appropriate consideration under these Procedures. The HSE will focus on the disclosure made i.e. the information which, in the worker's reasonable belief tends to show one or more relevant wrongdoings.
- 23.2 In general where a protected disclosure is made during an investigation, disciplinary or other HSE process, this should not affect those distinct processes. However, an exception may arise where the worker can demonstrate that the investigation, disciplinary or other action is a form of penalisation for making a protected disclosure.
- 23.3 Where a worker has made a disclosure, whether or not that has been assessed or investigated, the worker is still required to conduct themselves professionally and to continue to carry out their duties as normal. 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 protected disclosure.

24. REVIEW

- 24.1 While not provided in legislation the Guidance issued to Public Bodies by the Department of Public Expenditure and Reform makes provision for a review of certain matters. A review may therefore be sought in relation to the following by any party affected by the processes:
- (a) any decision made to disclose the identity of a discloser (except in exceptional cases);
 - (b) the conduct or outcome of any follow-up actions (including any investigation undertaken in respect of the disclosure); and/or
 - (c) the conduct or outcome of any assessment/investigation in respect of any complaint of penalisation.
- 24.2 An affected person can request a review by contacting the Office of the Authorised Person. Applications for review should set out the reasons a review is being sought.
- 24.3 Any review will be undertaken by a person who has not been involved in the investigation or decision.
- 24.4 The role of the reviewer is not to re-investigate the matter in question but to address the specific issues the applicant feels have received insufficient consideration. They will review the decision taken in the context of available information which may

include submissions from the review requester and other relevant parties. The reviewer will consider whether the correct procedures were followed; whether any terms of reference were adhered to; and whether any conclusions/findings could or could not reasonably be drawn from the information on the balance of probability.

24.5 If the review finds significant shortcomings or failings in the process, the HSE will consider what further actions may need to be taken in response to the findings.

24.6 Where a decision is taken to disclose the identity of the discloser (otherwise than a review conducted under paragraph 17.1(a) above), where practicable, the discloser should be offered a review before his/her identity is disclosed.

24.7 There is no entitlement to more than one review in respect of any of the issues referred to in paragraph 17.1 (a) to (c) above.

25. SUPPORT

25.1 The Employee Assistance Programme is available at all times to HSE employees, including those who make a protected disclosure and those involved in the investigation of a protected disclosure.

26. MANDATORY REPORTING

26.1 The Act does not oblige a worker to make a disclosure and disclosures made under the Act are therefore voluntary. These disclosures are different from the mandatory obligations to report contained in other legislation.

27. RECORDS

27.1 A record of every disclosure made internally will be made in line with the record keeping obligations of the Act. All records of disclosures should be maintained securely so as to comply with the requirements of confidentiality under the Act and with relevant obligations under the GDPR and the Data Protection Acts 1988-2018 (as amended from time to time). Records will be retained for no longer than is necessary and proportionate to comply with the provisions of the Act or any other legislation.

28. ANNUAL REPORTING

28.1 In accordance with its obligations under the Act, no later than 01 March each year, the HSE will provide the Minister for Public Expenditure and Reform with information as required under section 22 of the Act. No later than 31 March each year, the HSE will prepare and publish a report in relation to the previous year. The report shall be published in a form which does not enable the identification of persons involved in the protected disclosures.

28.2 The report will also contain the following information, as provided to the Minister:

- (a) The number of reports made to the HSE in the immediately preceding calendar year;

- (b) The number of reports transmitted to the HSE from the Protected Disclosures Commissioner in the immediately preceding calendar year;
- (c) In respect of each report referred to in paragraph (a) and (b) above, whether the relevant wrongdoing concerned was a breach of European Union law as defined in the Act ;
- (d) In respect of each report referred to in paragraph (a) and (b) above, the number of investigations and proceedings that were opened by the HSE;
- (e) In respect of each report referred to in paragraph (a) and (b) above, the number of investigations and proceedings closed by the HSE in the immediately preceding calendar year. The outcome for each, decision taken and, where possible and in so far as it can be ascertained, the financial damage identified and amounts recovered as a result of the investigation or proceeding.
- (f) The number of HSE investigations and proceedings that remain open in the immediately preceding calendar year (where the investigation or proceeding was opened by the HSE in the years preceding that calendar year);

28.3 The HSE will also publish this information in its Annual Report.

28.4 The HSE has a range of supervisory and enforcement measures to monitor and ensure effective compliance with this procedure to include periodic reporting to HSE Executive Management Team and the Board. All reporting will adhere to the duty of confidentiality as set out in this procedure.

29. AMENDMENTS

29.1 These Procedures may be revoked, replaced or amended at any time.

Appendix 1

List of general steps related to the processing of a protected disclosure

1. Acknowledgment of receipt of disclosure within 7 days of receipt.
2. Initial assessment by the Designated Person (or designate) to determine whether the disclosure constitutes a protected disclosure.
3. Determination of the wishes of the discloser in relation to protection of identity.
4. Advice on support available from employee assistances programme as required.
5. Referral to appropriate commissioning manager for appropriate action, ensuring that this manager has not been the subject of any of the content of the disclosure. This principle applies at all stages of the process
6. Initial examination /assessment of the issues by or on behalf of relevant commissioning manager to determine the appropriate next steps. Decision by commissioning manager as to the appropriate actions required to address the concerns which may include a fuller examination or investigation of the issues identified.
7. On completion of the required process a report to be completed which outlines how the issues were addressed and any consequential actions.
8. Information to be provided to the Designated Person by relevant senior manager in relation to how the protected disclosure was addressed and in relation to the implementation of any recommendations.
9. Feedback to the discloser of relevant information related to the outcome, where this is appropriate.
10. Carrying out of reviews as provided for in the procedure, if required.
11. Records in relation to each disclosure should be retained.
12. It is the responsibility of the relevant senior managers to assure themselves that these Procedures are being complied with. The HSE may seek to review such compliance.
13. The office of the Authorised Person will require documentation to confirm for each protected disclosure that the matter has been examined, that the issues raised, if they have been established, have been addressed and that an appropriate response has issued to the discloser.
14. Given the diverse nature of disclosures a timescale for the processing a disclosure is not being prescribed. However each disclosure should be dealt with as expeditiously as possible in the circumstances of the particular case