

Procedures on Protected Disclosures of Information in the Workplace

Note: This document is not a complete or authoritative statement of the law or a legal interpretation of the Protected Disclosures of Information provisions of the Health Act 2004 (as amended by the Health Act 2007)

1. Introduction

The health service is committed to maintaining the highest possible standards of care for patients/clients and providing employees with a safe system of work to enable them to deliver a high quality service. The health service is also committed to promoting a culture of openness and accountability so that employees can report any concerns they may have in relation to their workplace.

In the normal course of events, employees should report concerns to their line manager or, if appropriate, to another manager within the workplace. However, in exceptional cases, employees who may wish to report concerns may be reluctant to do so for fear of retaliation or victimisation. Such employees may now enjoy legal protection from any form of penalisation provided they make their disclosure in accordance with the procedure set out in this document. This document outlines what constitutes a protected disclosure and the process for making such a disclosure.

2. Protected Disclosures of Information

This procedure was devised to give effect to the legislation on Protected Disclosures of Information as provided for in the Health Act 2004 (as amended by the Health Act 2007). Its purpose is to facilitate employees to make protected disclosures in good faith where they have reasonable grounds for believing that the health or welfare of patients/clients or the public may be put at risk, or where there is waste of public funds or legal obligations are not being met, so that the matter can be investigated. The legislation also provides statutory protection for health service employees from penalisation as a result of making a protected disclosure in good faith in accordance with this procedure.

3. Scope

This procedure applies to all employees* of the following:

- The HSE and agencies funded by the HSE to provide health and social services on its behalf
- Any other person who has received or is receiving assistance in accordance with section 39 of the Health Act 2004 (as amended by the Health Act 2007) or section 10 of Child Care Act 1991
- A body established under the Health (Corporate Bodies) Act 1961

** For the purposes of the legislation, the definition of employee covers agency workers and persons on placement for the purpose of vocational training with any of the above.*

4. Subject matter of Protected Disclosures

Employees may report in good faith any matter which they have reasonable grounds for believing will show one or more of the following:

a. that the *health or welfare of a person in receipt of health or personal social service has been, is or is likely to be at risk*

b. that the actions of any person employed by or acting on behalf of the HSE or a HSE funded or grant aided agency has posed, is posing or is likely to pose *a risk to the health or welfare of the public*

c. that the HSE or a HSE funded or grant aided agency or a person employed by or acting on behalf of the HSE or a HSE funded or grant aided agency failed, is failing or is likely to *fail to comply with any legal obligation to which the relevant body or person is subject in the performance of the relevant body's or person's functions*

d. that the conduct of the HSE or a HSE funded or grant aided agency or a person employed by or acting on behalf of the HSE or a HSE funded or grant aided

agency has led, is leading or is likely to lead to a *misuse or substantial waste of public funds*

e. that such evidence to the above (a) to (d) has been, is being or is likely to be deliberately concealed or destroyed.

Employees who report any such matter in accordance with the procedures set out below will be protected from penalisation by their employers and from civil liability. The exception is where an employee has made a report which s/he could reasonably have known to be false.

5. Procedure for making a Protected Disclosure of Information to the Authorised Person

- 1) The employee should set out the details of the subject matter of the disclosure in writing on the Protected Disclosures of Information Form (see leaflet) and submit to the Authorised Person.
- 2) Following receipt of the disclosure, the Authorised Person will make initial enquiries to determine whether or not the subject matter of the disclosure comes within the scope of the Act ¹ and, if so, what form the investigation should take. If the subject matter of the disclosure falls within the scope of specific policies or procedures, an investigation will be carried out in accordance with the appropriate policy/procedure e.g.
 - Trust in Care Policy
 - Disciplinary Procedure
 - Children First Guidelines
 - Complaints Policy and Procedures

Note: *This list is not exhaustive*

If the matter does not come within the scope of the Procedures on Protected Disclosures of Information² but may come within the scope of

¹ As set out in Section 3i(a) to (e) of this document

² As set out in Section 3i (a) to (e) of this document

the Dignity at Work Policy, grievance procedure or other policy/procedures, the Authorised Person will advise the employee accordingly.

3) The Authorised Person may refer the matter or any part of it to an appropriate **Scheduled body** viz:

- the Adoption Board,
- the Chief Inspector of Social Services
- the Comptroller and Auditor General
- the Health Information and Quality Authority
- the Inspector of Mental Health Services
- the Irish Medicines Board
- the Mental Health **Commission**

or a **professional regulatory body** viz:

- an Bord Altranais,
- the Dental Council
- the Health and Social Care Professionals Council
- the Medical Council
- the Pharmaceutical Society of Ireland

or, where the Authorised Person believes that a criminal offence has been committed, to the **Garda Siochana**.

Where appropriate, the Authorised Person should liaise with the relevant Head of Department before proceeding with a disclosure to a professional regulatory body.

Notwithstanding a referral to any of the above, the Authorised Person may investigate the matter if s/he or the person in charge of the body³ to which the disclosure relates considers it appropriate to do so.

³ In the case of the HSE, the appropriate level of management will need to be identified.

- 4) The Authorised Person may inform the person in charge of the body to whom the disclosure relates of the subject matter of the disclosure who may, with the consent of the Authorised Person, appoint another person to investigate the subject matter.
- 5) If, at any time during an investigation, the Authorised Person believes the disclosure is false, misleading, frivolous or vexatious, he may cease the investigation.
- 6) An employee who makes a protected disclosure in good faith is protected from any form of penalisation regardless of the outcome of the investigation.
- 7) Employees who make a protected disclosure in good faith are also protected from civil liability. This protection does not apply however to an employee who makes a disclosure knowing it to be or reckless as to whether it is false, misleading, frivolous or vexatious or who furnishes information in connection with a disclosure which they know to be false or misleading.
- 8) The employee who makes the disclosure will be as far as possible and subject to any legal constraint informed of the outcome of the investigation.
- 9) An employee may make a disclosure direct to a Scheduled Body if that course of action is justified by reason of the urgency of the matter.
- 10) An employee may also make a protected disclosure to a Scheduled body if after making it to the Authorised Person no investigation takes place **or** if an investigation takes place but there is no action or recommended action in the matter.

6. Protected disclosure of information in relation to regulated health professions

An employee may make a disclosure to an appropriate professional regulatory body (as listed under (i) above), in accordance with the relevant legislation, which s/he has

reasonable grounds for believing will show that the actions of a person, the exercise of whose profession requires him or her to be registered with a professional regulatory body, *has posed, is posing or is likely to pose a risk to the health or welfare of the public*. The subject matter of the disclosure must relate to a health professional.

Such a disclosure shall be a protected disclosure under the Act provided it is made in good faith.

7. Protected disclosure of information to a Scheduled body

Notwithstanding the procedures set out at (i) above, an employee may make in good faith a disclosure on a matter which s/he has reasonable grounds for believing *will show a risk to the health or welfare of the public* to one of the following bodies:

- To an authorised person appointed by the Health Information and Quality Authority under the Health Act 2007 to monitor compliance with standards under section 8(1)(c) or undertake an investigation under section 9 of the Act, or
- To the Inspector of Mental Services who is in the course of an inspection carried out in accordance with section 51 of the Mental Health Act 2001
- To the Chief Inspector of Social Services who is in the course of an inspection carried out in accordance with section 41 of the Health Act 2007⁴

The employee making the disclosure must have reasonable grounds for believing that there is a risk to the health or welfare of the public.

8. Confidentiality

Confidentiality will be maintained in relation to the investigation of the subject matter of the disclosure insofar as is reasonably practicable. It is important to note that it may be necessary to disclose the identity of the employee who made the disclosure in order to ensure that the investigation is carried out in accordance with the rules of natural justice.

⁴ This provision has not yet come into operation

9. Representation

The employee may be represented by his/her union or work colleague at any meetings held in connection with the concerns raised.

10. Protection from Penalisation

Employees who make a protected disclosure in good faith have statutory protection from being subjected to detrimental treatment in respect of their terms and conditions of employment.

An employee who feels that s/he has suffered detrimental treatment by his/her employer in relation to any aspect of his/her employment as a result of making a protected disclosure can refer a complaint of penalisation to a Rights Commissioner.

The Health Act 2007 broadly defines ‘penalisation’ as including “any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his or her detriment with respect to any term or condition of his or her employment and which is consequent upon a protected disclosure by the employee.” Penalisation includes the following:

- a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1997 to 2005), or the threat of suspension, lay-off or dismissal,
- b) demotion or loss of opportunity for promotion
- c) transfer of duties, change of location of place of work, reduction in wages or a change in working hours (unless there are genuine service reasons)
- d) imposition of any discipline, reprimand or other penalty (including a financial penalty),
- e) coercion, intimidation or harassment
- f) injury, damage or loss, and
- g) threats of reprisal.

In order to refer a claim for penalisation, the employee must be able to demonstrate that s/he was subjected to detrimental treatment *as a result* of making a protected disclosure.

A complaint of penalisation must be submitted to a Rights Commissioner **within 12 months** from the date of the alleged act of penalisation. In exceptional circumstances, the 12-month time limit for submitting a complaint may be extended by up to 6 months (the period of the extension is such period as the Rights Commissioner considers reasonable).

The decision of the Rights Commissioner may be appealed to the Labour Court. The notice of appeal must be submitted to the Labour Court **within 6 weeks** of the date on which the Rights Commissioner decision was issued to the parties.

11. Making of False Reports

An employee who makes a disclosure which s/he knows or reasonably ought to know to be false is guilty of an offence under the Act. Such a person may be liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both. Alternatively on conviction on indictment the person may be liable to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years or to both.

12. Protection for Persons Reporting Child Abuse Act 1998

These procedures are without prejudice to the above Act.

Form for Protected Disclosures of Information

Please note that disclosures must be made in good faith and relate to a matter that you have reasonable grounds to be concerned about. It must not be intended to undermine the reputation of any colleague or service provider. If you make a disclosure which you know or reasonably ought to know to be false you will be guilty of an offence under the legislation.

1. Name of employee making the disclosure:

2. Job title, department and name of organisation:

3. Details of the disclosure (care should be taken to only include the name(s) of *individual(s) where directly relevant to the report*):

- Date(s)/Time(s) of occurrence(s) (if appropriate)

- Basis of your concern(s)

4. Employee's signature:

5. Date: