

# Protected Disclosures Policy



**Disclaimer** – This policy contains information based on Irish law. Please note however that it does not constitute legal advice nor is it intended to provide a comprehensive or detailed statement of the law. This policy is intended as a general guide to the legislation regarding protected disclosures and is not a substitute for professional legal advice. All information provided herein is provided without any warranty, express or implied, including as to the legal effect and completeness of the information. No liability whatsoever is accepted by the Land Development Agency for any action taken in reliance on the information contained within this Policy.

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## PROTECTED DISCLOSURE REPORTING GUIDANCE

### 1 POLICY STATEMENT

The Land Development Agency (the LDA) is committed to supporting a responsible and ethical organisational culture within the Agency. We recognise and rightly pride ourselves on the integrity that we bring to bear on our daily work. From time to time, however, things can go wrong and when that happens the Agency needs to hear about it and to act upon it to remedy matters.

We aim to foster a working environment where workers feel comfortable in raising concerns relating to potential wrongdoing within the Agency and to provide the necessary supports for those that raise genuine concerns.

This sort of working environment reflects our core values, especially those of:

- Integrity and professionalism; and
- Openness and transparency.

In the spirit of these values, all workers should feel comfortable raising concerns locally with their line manager or Heads of Departments

We recognise, however, that this may not always be the case. You may feel uncomfortable raising the concern locally; you may be unhappy with the way in which your concern was dealt with locally; or, you may want the additional advice and protection that comes with a more formal process.

This policy is designed to assure workers of our commitment to the protected disclosure process; to explain how it works; and to set out (in the attached procedures), the process involved.

Under our Protected Disclosure policy, you can raise a concern locally with your line manager or with the designated recipient. Contact details for the designated recipient are included in the Appendix 1 to the procedures.

Where an issue is raised under the Act, the LDA will apply the following principles:

- (a) Workers in the LDA are encouraged to raise reasonable concerns about possible wrongdoings in the workplace so that these concerns can be addressed.
- (b) All disclosures of wrongdoing in the workplace will, as a matter of routine, be treated seriously and investigated appropriately, therefore, workers should not need to seek redress via the Act.
- (c) The LDA will foster a working environment which focuses on responding to the concern in question and not on the complainant.
- (d) Support is available to workers who make disclosures of possible wrongdoing through the Employee Assistance Programme.
- (e) The LDA will ensure that competent, timely assessment and investigation of reports of wrongdoing takes place and will be followed, where necessary, by an appropriate response. The discloser will be informed as to how the issue has been addressed, including the outcome of any investigation.

### 2 RESPONSIBILITY

Overall responsibility for these procedures rests with the Board of the Agency. Day-to-day responsibility for the operation of the procedures is delegated to the Leadership Team that include the Head of Finance, Operations, Investment and Property as well as Chief Executive Officer.

### 3 SCOPE OF PROCEDURES

The procedures apply to all workers as defined in section 3 of the Act. This includes current and former workers of the Agency whether permanent or temporary, retired workers, ex-workers, independent contractors, consultants, trainees and agency workers.

Legal advisers, where information comes to their attention while providing legal advice, are excluded from the protections of the Act. 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 adviser.

The Act applies to workers and does not include volunteers within that definition, however, the LDA will afford this protection to volunteers in addition to workers where a volunteer discloses wrongdoing. That is, the disclosure will be the subject of assessment and investigation where warranted. The Agency will make the discloser aware of any risks that might arise for them in making a disclosure.

### 4 DEFINITIONS

#### 4.1 Not covered by these procedures

These procedures do not cover matters of personal interest, e.g. complaints or personal grievances. Such concerns should continue to be reported to Human Resources.

A disclosure is not a protected disclosure where the individual knowingly conveys false, misleading, frivolous or vexatious information. Any allegations which are found to be made in bad faith may result in disciplinary or other appropriate action.

#### 4.2 Protected Disclosure

Drawing from the Act, a protected disclosure can be described as a disclosure of information which, in the reasonable belief of the worker tends to show one or more relevant wrongdoings, and came to the attention of the worker in connection with the worker's employment.

#### 4.3 What do we mean by 'worker' and 'employee'.

"Worker" means an individual who (a) is an employee; (b) entered into any other contract (whether express/implied/oral/written), to perform any work or services for another party for the purpose of that party's business; (c) 3rd party supplier; or (d) is/was provided with work experience pursuant to a training course or programme otherwise than under a contract of employment.

"Employee" has the meaning given by section 1 of the Unfair Dismissals Act 1977 *an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment and, in relation to redress for a dismissal under this Act, includes, in the case of the death of the employee concerned at any time following the dismissal, his personal representative.*

#### 4.4 What do we mean by 'disclosures of information'?

A protected disclosure should contain 'information' which tends to show one or more relevant wrongdoings. The ordinary meaning of disclosing information is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation based on a suspicion that is not founded on anything tangible.

A worker should not investigate matters yourself to find proof of your suspicion. All they need to do is disclose the information they have to the designated recipient, based on a reasonable belief that it shows wrongdoing and, where the information relates to individuals, that it is necessary to disclose that information.

#### **4.5 What is ‘reasonable belief’?**

You 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 must be correct. You may have reasonable grounds for believing that some form of wrongdoing is occurring based on your observations, but it may subsequently turn out that you were mistaken. You will not be penalised simply for getting it wrong. So long as you had a reasonable belief that the information showed, or tended to show, wrongdoing, you will be afforded these protections

However, a disclosure made in the absence of any reasonable belief will not attract the protection of the Act and, may result in disciplinary action against the discloser.

#### **4.6 What wrongdoing can be the subject matter of a Protected Disclosure?**

Section 5(3) of the Act sets out relevant wrongdoings as follows:

- (a) The commission of an offence.
- (b) The failure of a person 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) A miscarriage of justice.
- (d) A danger to the health and safety of any individual.
- (e) Damage to the environment.
- (f) An unlawful or otherwise improper use of funds or resources of a public body, or of other public money.
- (g) An act or omission by or on behalf of a public body that is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement; or
- (h) Information tending to show any matter falling within any of the preceding paragraphs (a) to (g) has been, is being, or is likely to be concealed or destroyed.

Note that it does not matter whether the suspected wrongdoing has occurred, is occurring or would occur in Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other relevant country or territory.

#### **4.7 What do we mean by ‘in connection with the worker’s employment’?**

The information must come to your attention in connection with your employment. For example, a disclosure will not be protected if it relates to matters in someone’s personal life and is unconnected to the workplace. A disclosure must be made as prescribed in the Act (and as set out in Section 4 of this Policy). The worker’s motivation for making a disclosure is irrelevant.

#### **4.8 Discloser**

‘Discloser’ means the person making the disclosure.

#### **4.9 Recipient**

‘Recipient’ means the person handling the disclosure, usually a line manager, senior manager, or a designated staff member of LDA.

### **5 MAKING A PROTECTED DISCLOSURE**

#### **5.1 Should I be using the protected disclosure route at all?**

The Department of Public Expenditure and Reform has provided financial assistance to Transparency International Ireland (Transparency International is a global independent anti-corruption NGO) to operate a ‘Speak Up’ helpline.

You can call the helpline for free, confidential and expert advice at 1 800 844 866 or download the free guide 'Speak Up Safely' at [www.speakup.ie](http://www.speakup.ie)

## **5.2 Procedure to make the disclosure**

A disclosure can be made through line management or to the Agency's Protected Disclosure recipient. Disclosures can be made verbally or in writing (electronically or manually). Written disclosures are preferable as there is less scope for misunderstanding. Should you raise a concern verbally we will keep a written record of our conversation and provide you with a copy after our meeting.

You must make a disclosure in the manner set out in the Act to gain the protections of the Act.

Disclosures should:

- a) State that the disclosure is being made under the Protected Disclosure Act 2014.
- b) Provide the discloser's name, position in the organisation, place of work and confidential contact details.
- c) Provide relevant information in respect of the alleged wrongdoing.
- d) Provide the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified.
- e) Indicate whether the wrongdoing is still ongoing.
- f) Indicate whether the wrongdoing has already been disclosed and if so to whom, when and what action was taken; and
- g) Provide any other relevant information.

A protected disclosures notification form is attached at Appendix B.

## **5.3 Internal or External Disclosure**

Under the Protected Disclosures Act 2014, protected disclosures can be made both within the Agency and outside of it (per sections 5.3.1 and 5.3.2). In most circumstances it is preferable to make an internal disclosure. The Agency is committed to supporting and facilitating the making of internal disclosures to:

- ensure early detection and remediation of potential wrongdoing.
- provide the safest means for workers to make a disclosure.
- build a responsible and ethical organisational culture; and
- demonstrate good governance and accountability.

You are strongly encouraged therefore to use the internal channels to make a disclosure.

Note that you may avail of external channels to make a disclosure, but you should be aware that higher standards generally apply in terms of gaining the protections of the Act when a disclosure is made externally.

### **5.3.1 Internal Disclosures**

A disclosure can be made through line management, the Agency's designated recipient or the Chairman of Board.

#### **5.3.1.1 Line Management**

Individuals may raise concerns with their direct line manager. Alternatively, if the individual feels unable to raise the matter with their direct line manager, then the concern should be raised with their Head of Department.

#### **5.3.1.2 Designated recipient in LDA**

Individuals may raise a concern with the Agency's 'protected disclosures designated recipient.

Contact details for the current office holder in this post are included in the attached Appendix 1.

From time to time and where appropriate, the Agency may nominate any other member of the senior leadership team as Designated Recipient.

### 5.3.2 External Disclosures

Workers are encouraged to raise their concerns under the internal disclosure procedures in the first instance, however, it is recognised that this may not always be appropriate, so a worker may make an external disclosure. The Act identifies the following avenues for making a protected disclosure outside of the employer (in this case, the Agency):

- a) A responsible person outside the Employer; if the worker reasonably believes that the wrongdoing relates to a person other than their employer or where that responsible person has legal responsibility for something in respect of which a wrongdoing may have occurred. For example, an agency worker might make a disclosure to the organisation in which they are working rather than to their own employer.
- b) A prescribed person (i.e. as prescribed by [Statutory Instrument 339/2014](#) - (As amended by SI 448/2015)) such as the Comptroller and Auditor General, the Data Protection Commissioner, the Chief Executive of the Health and Safety Authority etc. In such cases, an additional requirement applies: the worker must believe that the information disclosed and any allegations contained in it are **substantially true** (this is a higher evidential standard than a 'reasonable belief') and the relevant wrongdoing must fall within **the remit** of the prescribed person.
- c) Minister of the Government on whom any function relating to the public body is conferred or imposed by or under any enactment. Note that in the event of a worker in the Agency making a disclosure to the Minister for Housing, Planning and Local Government, it should be done in writing in line with internal procedures of the Department of Housing, Planning and Local Government.
- d) A legal adviser, if a disclosure is made by the worker in the course of obtaining legal advice from, for example, a solicitor, a barrister or a trade union official. It should be noted that lawyers are precluded from gaining protection for disclosing information provided by clients while obtaining legal advice. It cannot be assumed that trade union officials are protected if they disclose information provided by their members while obtaining advice.
- e) Alternative external disclosure, such as to the media or other public domain, must meet higher standards in order to be protected. This is the most difficult type of disclosure for a worker to make, as unless all the following conditions (i) to (iv) set out below are met, such disclosure will not be protected:
  - i. The worker must reasonably believe that the information disclosed, and any **allegations contained in it, are substantially true.**
  - ii. The disclosure **must not** be made for personal gain, financial or otherwise, except for statutory rewards.
  - iii. Given all the circumstances of the case, it is determined that it was reasonable for the worker to make the disclosure, based on the following:
    - The identity of the recipient.
    - The seriousness of the alleged relevant wrongdoing.
    - Whether the alleged relevant wrongdoing is continuing or is likely to occur in the future.
    - Where a worker has previously made a disclosure of substantially the same information either internally or externally to either a prescribed person or to the Minister, any action



which the recipient of this previous disclosure has taken, or might reasonably be expected to have taken, as a result of the previous disclosure; and

- Whether in previously making an internal disclosure of substantially the same information to the LDA, an authorised third party or responsible other person, the worker complied with this Policy.
- iv. **At least one** of the following conditions must be met, such that:
- At the time the worker makes the disclosure, s/he reasonably believes that s/he will be penalised by his or her employer if s/he makes an internal disclosure or an external disclosure to either a prescribed person or to the Minister for Housing, Planning and Local Government.
  - In a case where there is no relevant prescribed person to whom an external disclosure may be made, the worker reasonably believes that it is likely that evidence relating to the relevant wrongdoing will be concealed or destroyed if he or she makes an internal disclosure.
  - The worker has previously made a disclosure of substantially the same information either internally or externally to either a prescribed person or to the Minister for Housing, Planning and Local Government; and
  - the relevant wrongdoing is of an exceptionally serious nature.

Where an external disclosure is made in other cases, a worker should do so in writing and keep their own copy of the disclosure and any information provided with it.

The safest route to take when making a disclosure from the point of view of ensuring your protection, is an internal disclosure and we would encourage you to use the internal option. However, if that is not appropriate and you prefer to make an external disclosure, then of the 5 alternative options outlined above, a), b), c) or d) are preferable over e).

If you decide to make a disclosure to an external party, it will be for that party to decide if it is, in fact, a protected disclosure (the assessment) and to determine the nature of any investigation that may take place. In such cases, the Agency will cooperate fully with the investigation.

#### **5.4 Anonymous Disclosures**

A worker may make an anonymous disclosure if they wish to do so. A disclosure is considered anonymous if:

- the identity of the Discloser is not revealed and if no contact details for the Discloser are provided; or
- the Discloser does not disclose their name but does provide contact details.

Anonymous disclosures will be acted upon to the extent that this is possible given the constraints in obtaining further information on the alleged wrongdoing.

While affording full and proper consideration to an anonymous disclosure, it should be noted that the protections available under the Act and important elements of this protected disclosure guidance document (e.g. keeping the Discloser informed), cannot in such circumstances be accessed by a worker who makes an anonymous disclosure unless the worker is prepared to dispense with anonymity. In addition, it should be noted that a worker cannot obtain redress under the Act without identifying themselves.

## 6 PROTECTION AVAILABLE FOR DISCLOSERS

The Act sets out seven main protections for disclosers. The first three relate to employees and protect against unfair dismissal and other forms of penalisation that only apply to employees. The remaining four protections are available to workers, and the new right to sue is also available to third parties

### 6.1 Unfair dismissal protection

Dismissing an employee for making a protected disclosure constitutes an unfair dismissal. Apprentices, trainees and employees are protected from the start of their employment and need not have the minimum one year's service normally required. Employees above the normal retirement age are also protected, although they are normally excluded from unfair dismissals protection. Employees who are unfairly dismissed for making a protected disclosure are entitled to reinstatement to their job, re-engagement or compensation of up to five year's gross pay (compensation for other unfair dismissals is only up to two year's gross pay). Compensation may be reduced by up to 25% where a relevant wrongdoing was not the employee's motivation for making a disclosure.

### 6.2 Protection of Interim Relief Pending Determination of a Claim for Unfair Dismissal

An employee, trainee or apprentice who claims to have been unfairly dismissed for making a protected disclosure can apply to the Circuit Court for interim relief pending the determination or settlement of the unfair dismissal claim. This **must** be done within **21 days** after the date of dismissal. The LDA should be given advance written notification of the intention to apply for interim relief. The Court will determine the application as soon as possible and must be satisfied that that the dismissal results wholly or mainly from the making of a protected disclosure.

### 6.3 Protection Against Penalisation

The Agency cannot penalise or threaten to penalise an employee for making a protected disclosure or allowing anyone else to do so. Penalisation is any act or omission that detrimentally affects a employee and in particular includes suspension, lay-off or dismissal, demotion, loss of opportunity for promotion, transfer of duties, change of location of place of work, reduction in wages, change in working hours, the imposition of or administering of any discipline, reprimand or other penalty (including a financial penalty), unfair treatment, coercion, intimidation or harassment, discrimination, disadvantage, injury, damage, loss or threat of reprisal.

Penalisation of employees who make a disclosure will not be tolerated and employees who feel that they are being subjected to adverse treatment should report the matter immediately to management. Such notifications will be assessed/investigated and appropriate action will be taken where necessary. 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 discloser under the Act.

This protection cannot be used with the unfair dismissals protections set out above. In general, where a protected disclosure is made during an investigation, disciplinary or other process, 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.

### 6.4 Right to Sue Protection

If a person causes loss, damage, disadvantage, or injury to a worker or a third party because s/he made a protected disclosure, the injured party may sue the person on causing it. An injured party may not both sue a person about a particular matter, and also make an unfair dismissal claim or a complaint against penalisation as set above against the same person about the same matter.

### 6.5 Protection from Being Sued

Workers who make a protected disclosure cannot be sued for making such disclosure and will have qualified privilege under the Defamation Acts. Defamation means stating something that tends to injure a person's reputation in the eyes of reasonable members of society, either verbally (slander), or in writing/broadcasting (libel).

Qualified privilege is lost if it is proved that the worker acted with malice.

## **6.6 Protection from Prosecution**

A worker cannot be prosecuted for the disclosure of information where this is restricted or prohibited, if the disclosure was, or was reasonably believed by the person to be, a protected disclosure.

## **6.7 Protection of Discloser's Identity**

A recipient to whom a protected disclosure is made or referred must take all reasonable steps to avoid disclosing information that might identify the person who has made the protected disclosure. The discloser will be consulted with and, where possible, their informed consent will be gained, prior to any action being taken that could identify them. However, this protection is not absolute, and the discloser's identity could be revealed where:

- i) the recipient shows that he or she took all reasonable steps to avoid disclosing any such information.
- ii) the recipient reasonably believes that the person making the disclosure does not object.
- iii) the recipient reasonably believes that disclosing any such information is necessary for the:
  - (a) effective investigation of the wrongdoing concerned; or,
  - (b) prevention of serious risk to the security of the State, public health, public safety or the environment; or,
  - (c) prevention of crime; or,
  - (d) prosecution of a criminal offence
- iv) the disclosure is otherwise necessary in the public interest or is required by law.

Workers who are concerned that their identity is not being protected should notify the person investigating their disclosure. Such notifications will be assessed/investigated in accordance with review procedures and appropriate action will be taken where necessary. If a recipient fails to comply with these confidentiality requirements, the discloser can take action against the recipient personally if he or she suffers any adverse consequences.

## **7 DISCLOSURE.ASSESSMENT, INVESTIGATION AND OUTCOME OF AN INTERNAL PROTECTED DISCLOSURE**

### **7.1 Assessment**

All reported disclosures about perceived wrongdoing in the workplace must be treated seriously and confidentially. The discloser will be referred to the Policy to ensure they are aware of internal disclosure procedure.

While a disclosure may be made verbally, the discloser will be encouraged to make the disclosure in writing, using LDAPD01 form (Appendix B). If the discloser is unwilling or unable to do so, or is making a disclosure over the phone, the information will be recorded by the recipient on the LDAPD01 form. It is important to document all steps throughout the process. As it is not possible to know at the time whether a disclosure will subsequently be deemed protected under the Act and all disclosures are presumed to be protected until proved otherwise, the recipient should keep a complete written record of their actions, including timelines. It should be ascertained if the discloser wishes to protect his or her identity and this should be indicated on the form.

All reasonable steps will be taken to protect the identity of the discloser, unless there is a reasonable belief that revealing their identity is necessary to effectively investigate the wrongdoing disclosed; to prevent crime or serious risk to State security, public health, public safety or the environment; to prosecute a criminal offence; in the public interest or if required by law. The recipient(s) can be personally sued by the discloser for any loss arising from

revealing the discloser's identity outside of these circumstances. If it becomes necessary to reveal the discloser's identity for any of the above reasons, the discloser should be informed in advance, save for exceptional cases. The discloser may request a review of this decision and a review should be carried out, where practicable before such disclosure of information is made.

The recipient will ensure that the wrongdoing being alleged is relevant, i.e. that it meets criteria as set out in the Policy per section 4.5 above. If it does not meet the criteria to be deemed 'relevant', the disclosure will not be protected, and this fact will be brought to the attention of the discloser. If the disclosure in truth a personal complaint or grievance, the discloser should be referred to the appropriate procedures and the matter should not be proceeded further as a protected disclosure. In some cases, a personal grievance may be deeply and inextricably intertwined with the concern raised or it may be discloser's primary motivation. As the worker's motivation for disclosing the matter is irrelevant, it should be proceeded with as a protected disclosure.

The assessment process will include the following steps:

- a) Assessing whether the disclosure is based on the discloser's reasonable belief or is a deliberately false report. If the disclosure is found to be deliberately false, HR Department should be informed to decide what disciplinary action will be taken.
- b) Ascertaining if the wrongdoing has occurred in the past, is continuing to occur or is likely to occur in the future.
- c) Clarifying with the discloser the basis of the concern raised and establishing what evidence is available to support the disclosure. Not all disclosures may merit a full-blown investigation. Examples may include where the discloser does not have all the relevant facts or where a misunderstanding has arisen. It is important to ensure that the evaluation of the case is sufficiently robust to explain the basis of any decision to the discloser.
- d) Equally, where discloser does not have hard evidence of wrongdoing but has a reasonable belief in their concerns, a disclosure will proceed to an investigation which may uncover evidence of wrongdoing.
- e) Gauging the risk associated with the issue and taking immediate action if the alleged wrongdoing involves a serious loss or danger to others.
- f) Carrying out all relevant enquiries promptly, sensitively and discreetly to protect the identity of the discloser (if it is necessary to reveal the worker's identity to undertake an effective enquiry, the recipient will consult with the relevant person in the first instance).

If it is determined that the matter disclosed meets the criteria of a protected disclosure under the Act, the matter will be referred for investigation and the discloser will be notified of this development.

Where the assessment concludes that the matter does not meet the criteria of a protected disclosure (e.g. where the issue is a personal grievance or complaint) the recipient will advise the discloser of this conclusion and offer advice on the appropriate steps to take.

## **7.2 Investigation**

Where the assessment by the recipient concludes that the matter reported meets the criteria of a protected disclosure issue, it will be referred for investigation. The nature of the investigation will vary depending on the seriousness of the matter disclosed. The recipient may decide to refer a disclosure for investigation to specialist

or other units within LDA which may include referral to an outside body, including An Garda Síochána. If the recipient considers it appropriate, the matter may be referred to an external third party or third parties to investigate.

In all cases, the discloser will be informed by the recipient of the chosen route of investigation. Regardless of which route the investigation takes, it will embody the following principles:

- a) The investigation will be carried out in a confidential and fair manner which is fully consistent with the principles of natural justice.
- b) All reasonable steps will be taken to protect the identity of the discloser and those against whom allegations are made, unless there is a reasonable belief that revealing the discloser's identity is necessary to effectively investigate the wrongdoing disclosed; to prevent crime or serious risk to State security, public health, public safety or the environment; to prosecute a criminal offence; in the public interest or if required by law.
- c) Evidence will be sought from any relevant witnesses.
- d) The investigation will assess whether the disclosure report is based on a reasonable belief but ungrounded; based on reasonable belief and grounded; or a deliberately false report.
- e) The Agency will take appropriate action if the disclosure is grounded.
- f) If the disclosure is deliberately false, the Agency may consider disciplinary action.
- g) on completion of the process the recipient will report the outcome, including details of the action taken, to the discloser.

### **7.2.1 Feedback to the discloser**

Individuals making protected disclosures will be provided with periodic feedback, in confidence, in relation to the matters disclosed and will be advised when consideration of the disclosure is complete, save for exceptional cases. However, 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 Agency has no obligation to inform the discloser of the progress or outcome of any disciplinary process involving another worker which may arise on foot of an investigation following a protected disclosure. In general, such information is confidential between the employer and the worker who is the subject of the disciplinary process. The discloser will be informed and assured that appropriate action has been taken but is not generally entitled to know what such action entailed.

### **7.2.2 Rights of the respondent in an investigation**

The general principles of natural justice and fair justice procedures will apply in respect of any worker of the Agency who is the subject (the respondent) of any investigation. The Agency will take great care in providing information to the person who has made the disclosure to ensure that it does not breach the legal rights of any person who has been accused of wrongdoing.

The recipient will arrange appropriate supports and protections as and when appropriate.

In the interests of natural justice, the person(s) against whom the allegation is made will be informed in writing of the allegation and all of the supporting evidence, and will be allowed full opportunity to comment at an appropriate stage in the process and before the investigation is concluded. However, the person accused of wrongdoing does not have the right to know the identity of the worker who has made the report (unless anonymity is waived).

The person accused of wrongdoing is entitled to be informed of the outcome of the investigation and is entitled to a copy of the investigation report if it concludes that a wrongdoing has occurred.

### **7.3 Outcomes following an Investigation**

The following are potential outcomes on conclusion of the investigation of the matter disclosed:

1. The disclosure is upheld or partly upheld leading to:
  - The malpractice being stopped, the system weaknesses identified and addressed, or the concern being addressed in so far as is reasonable.
  - Disciplinary action being taken against the wrongdoer depending on the results of the investigation.
  - The matter being referred to an outside body, including An Garda Síochána.
2. The disclosure is not upheld leading to:
  - No action if the allegation is made in good faith but proves to be unfounded.
  - Disciplinary action being considered against the discloser in the event of the claim being found to be malicious or otherwise in bad faith.

If the outcome of the investigation of a disclosure is not to the satisfaction of the worker who reported the issue, that individual has the right to seek a review.

### **7.4 Review**

The discloser may seek a review of the following:

- a) Any decision made to disclose their identity (save in exceptional cases).
- b) The outcome of any assessment/investigation undertaken in respect of the protected disclosure.  
and
- c) The outcome of any assessment/investigation in respect of any complaint of penalisation.

Reviews will be undertaken by an appointee of the LDA. Where a decision is taken to disclose the identity of the discloser, where at all possible, the discloser will be offered a review before their identity is disclosed. Only one review about the same issue will be undertaken and no further reviews will be facilitated.

## **8 OTHER CONSIDERATIONS**

### **8.1 Motivation**

Your motivation for making a disclosure is irrelevant when determining whether it is a disclosure protected by the Act. All disclosures will be dealt with regardless of your motivation for making the disclosure, and you will be protected so long as you reasonably believe that the information disclosed tends to show a wrongdoing.

However, disclosure of a wrongdoing does not necessarily confer any protection or immunity on you in relation to any involvement that you may have had in that wrongdoing.

## **8.2 Disciplinary Record of Discloser and other related matters**

Where a worker makes a disclosure of alleged wrongdoing it will be given appropriate consideration.

The Agency will generally focus on the disclosure made (the message), as opposed to any disciplinary (or other) issues related to the person making the disclosure (the discloser).

In general, where a disclosure is made during an investigation, disciplinary or other process this should not affect those distinct processes. However, an exception might be made where the worker can demonstrate that the investigation, disciplinary or other action is found to be a form of penalisation for making a protected disclosure.

## **8.3 Mandatory Reporting**

The Act does not require a worker to make a protected disclosure and it also does not absolve any worker from pre-existing mandatory obligations to report where such obligation is contained in other legislation. For example, there are other pieces of legislation applying to certain sectors (financial, medical etc.) where reporting of certain matters is mandatory.

## **8.4 Non-restriction of rights to make protected disclosures**

In accordance with the Act, the Agency will not have or tolerate 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.

## **8.5 Support available to workers making disclosures**

The Agency is committed to ensuring that workers are supported in making protected disclosures. The designated recipients will provide that support in the first instance where internal disclosures are concerned.

## **8.6 Record-keeping and Reporting**

The Agency will maintain an appropriate case management system to record and track protected disclosures. The Agency will maintain this system and compile and publish the Annual Report including the number of protected disclosures received in the preceding year and the action taken (if any).

## **9 EVALUATION AND REVIEW OF THE PROTECTED DISCLOSURES POLICY**

This policy will be reviewed at minimum intervals of two years or when required by the Agency's Board. The senior leadership team will monitor the operation of the procedures on an ongoing basis and report its findings to the Board.

## 10 REVISION HISTORY

Version	Author	Date	Revision
	Monika Szyszko	13/10/2020	
	Rose Kenny	14/10/2020	

## THIS DOCUMENT HAS BEEN APPROVED BY

	Name	Signature	Date reviewed
1	LDA Board		11/5/2021



## **APPENDIX A – CONTACT DETAILS**

Contact details for designated recipients:

Name: Monika Szyszko  
Title: Compliance Manager  
Email: mszyszko@lda.ie



<b>Has wrongdoing already been disclosed to any member of LDA management?</b>		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>If Yes, to whom?</b>			
<b>What, if any, was the effect of this disclosure?</b>		<b>When disclosed?</b>	
		D D M M Y Y Y Y	
<b>CONTACT DETAILS</b> <i>(in block capitals)</i>			
<b>Name</b>			
<b>Grade</b>			
<b>Business Unit</b>			
<b>Work Address</b>			
<b>Phone Numbers/Email Addresses</b>		<b>Contact Permitted</b>	
<b>Work</b>		<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Work Mobile</b>		<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Home</b>		<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Personal Mobile</b>		<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Work Email Address</b>		<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Personal Email Addresses</b>		<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>I expect my disclosure to:</b>			
		<input type="checkbox"/> Remain Confidential	<input type="checkbox"/> Not to be Confidential
<b>Signature</b>			
		<b>Date of Disclosure</b>	
		D D M M Y Y Y Y	

### **Guidelines on Completing LDA Protected Disclosure Form**

- 1.** Before you complete this form, you should read the attached Guidance on protected disclosure reporting in the workplace carefully and ensure that the subject matter of your concern is covered by the legislation.
- 2.** Please note that protected disclosures must be made in good faith and relate to an alleged wrongdoing for which you have a reasonable belief. It must not be merely intended to undermine the reputation of any colleague or service provider. If you make a protected disclosure which you know or reasonably ought to know to be false, you will be guilty of an offence under the legislation and subject to disciplinary action at the discretion of the Agency.
- 3.** Describe the alleged relevant wrongdoing in the yellow box. Attach additional pages if there is insufficient space but ensure that each page is headed *Description of Alleged Wrongdoing*.
- 4.** Indicate the seriousness of the alleged wrongdoing on a scale from 1 – 5, where 5 is the most serious and 1 is the least serious.
- 5.** Tick the *Yes* checkbox if the alleged wrongdoing is ongoing; otherwise tick the *No* checkbox. Tick the *Yes* checkbox if the alleged wrongdoing is likely to occur in the future; otherwise tick the *No* checkbox. Only **one** of these *Yes* checkboxes should be ticked.
- 6.** Provide any other relevant information that shows the alleged relevant wrongdoing in the orange box. The specific nature of the alleged relevant wrongdoing should be communicated at the time the disclosure is made.
- 7.** Give the date of the alleged wrongdoing (if known) or the date the alleged relevant wrongdoing commenced or was identified (if known).
- 8.** Include the name of the person(s) (if known or applicable) allegedly involved in the green box to assist with the investigation of the matters raised in the disclosure.
- 9.** Tick the *Yes* checkbox in the pink box if the alleged wrongdoing has already been disclosed to any member of management and, if so, state to whom, when and to what effect.
- 10.** Supply discloser's contact details, including name, title, work address, work/home landline numbers, work/personal mobile numbers and work/personal email addresses and for each tick *Yes* or *No* to indicate the contact channel(s) which the discloser will

permit. The discloser will only be contacted via the channel(s) where they have ticked Yes. If a discloser does not wish to use a particular channel (e.g. a personal mobile number), it is not necessary to supply contact details for it, but it is useful to supply details for a contact channel (e.g. a work phone number/email address) through which the discloser definitely does not wish to be contacted. Obviously, where a discloser wishes to remain anonymous, all these details will be omitted.

- 11.** In the white box, state whether confidentiality is expected. Sign the disclosure unless it is to be anonymous. Date the disclosure.