



**An Bord Um
Chúnammh Dlíthiúil**
Legal Aid Board

Providing access to justice since 1979

Policy on protected disclosure reporting in the workplace

April 2024

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Policy on protected disclosure reporting in the workplace

Introduction and principles underlying policy

The Legal Aid Board is a member of the Integrity at Work programme, a Transparency International Ireland initiative. As part of its commitment to protecting workers who raise concerns of wrongdoing, the Board has signed and complies with the Integrity at Work Pledge to ensure that workers reporting wrongdoing will not face penalisation and that action will be taken in response to the concerns raised. A copy of the Pledge is in Appendix I.

By fostering and supporting a strong ethical culture, incorporating the principles of openness and transparency, the Board encourages workers to raise concerns regarding alleged wrongdoing in the workplace. This policy should be considered a part of the Board's approach to good corporate governance ensuring that high standards are maintained and a culture of 'speaking up' is encouraged.

Workers are protected under the Protected Disclosures Act 2014 as amended by the Protected Disclosures Amendment Act 2022 (collectively referred to in this policy as the PDA 2022) against reprisals even if the workers' concerns are found to be misguided or mistaken. Accordingly, it is always appropriate for workers to raise concerns when they are based on a reasonable belief irrespective of whether any wrongdoing is in fact subsequently identified.

It is important to emphasise that this policy is not a replacement for existing mandatory reporting regimes, nor a replacement for existing grievance mechanisms. Workers should be aware that in order to attract protections under the PDA 2022 certain conditions must be adhered to.

Who can make a protected disclosure?

For the purposes of the [PDA 2022](#) Act a 'worker' can make a protected disclosure. A worker means an individual who has acquired information on a relevant wrongdoing in a work-related context and includes:

- any current or former employees of the Legal Aid Board;
- independent contractors;
- trainees;
- volunteers;
- board members;
- job candidates.

What is a protected disclosure?

A Protected Disclosure is a disclosure of relevant information by a worker, that in the reasonable belief of the worker tends to show one or more 'relevant wrongdoings' that came to their attention in a work-related context.

Relevant wrongdoings include:

- that an offence, has been, is being or likely to be committed;
- that a person has failed, is failing, or likely to fail to comply with any legal obligation other than under the worker's contract of employment;
- that a miscarriage of justice has occurred, is occurring or is likely to occur;
- that the health or safety of any individual has been, is being or is likely to be endangered;
- that the environment has been, is being or is likely to be damaged;
- that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has, is or is likely to occur;

- that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement;
- that information tending to show any matter outlined above has been, or is likely to be, concealed or destroyed.

This policy does not cover a disclosure where the worker knowingly conveys false, misleading, information. If it transpires that a worker makes a disclosure, which they know to be false or do not believe to be true the Board may take disciplinary or other legal action.

What is the difference between a protected disclosure and making a complaint?

The aim of this policy is protect those who come forward and voluntarily make a disclosure within the meaning of the Act. It does not cover personal complaints or personal grievances. The Civil Service Grievance Procedure is designed to deal with individual complaints from workers in a fair, prompt and impartial manner. There are several stages in the grievance process, including a requirement for the complainant to outline, in writing, the nature of the grievance and the corrective action sought where the grievance is not resolved at the initial informal stage of the process.

The Grievance Procedure is available at link below.

[Circular 11/2001:- Revised procedure for dealing with grievance problem](#)

Examples of a grievance

- Complaint around selection criteria for a promotional post.
- Complaint around allocation of overtime.
- Matters concerning interpersonal issues exclusively affecting the worker.

Example of a protected disclosure

- In a hazardous work situation information regarding a failure to provide or wear protective clothing and adhere to health and safety guidelines.
- Information about the improper use of funds, bribery and fraud.

What type of disclosure is covered by the policy?

A worker may observe behaviour that they feel is not inside acceptable boundaries. If they wish to proceed with a formal disclosure, while workers are not expected to investigate or have absolute proof of wrongdoing misconduct or wrongdoing, they will need to be able to demonstrate and support reasons for their concern. A disclosure of information made by a worker in the reasonable belief that a wrongdoing may have occurred, is occurring or is likely to occur is covered by the policy:

The list above is for illustrative purposes and is non-exhaustive. The Policy does not relate to disclosures of wrongdoing if the matter is one which is the function of the worker or Board to detect, investigate or prosecute. A worker may, however, make a disclosure where they have a reasonable belief that this function is not being fulfilled properly in the Board.

A worker does not need to be certain about the facts in their disclosure, it is sufficient that in the reasonable belief of the worker, the information tends to show one or more relevant wrongdoings and the information came to the attention of the worker in a work-related context

When should a worker make a disclosure?

A worker should make a disclosure if in their reasonable belief any of the wrongdoings outlined in section 4 or other possible improprieties may have occurred, is occurring or is likely to occur. A concern which is not reported may allow the malpractice to continue, to the detriment of the Board and/or service users. Workers who make disclosures about alleged breaches of Legal Aid Board or

Civil Service policy such that harm may be arising to others or to the Board will also be afforded the protections by the Board under this Policy.

How to make a protected disclosure

Workers are encouraged to make disclosures internally and to use the Department's internal procedures as outlined below even where they may have already made a disclosure to an external body. A worker must make a disclosure in the manner set out in the PDA 2022 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.

Disclosure to Employer

A worker, who reasonably believes that a relevant wrongdoing has occurred, is occurring or is likely to occur, should firstly consider reporting the perceived wrongdoing to their:

- **Line manager at HEO level, Managing Solicitor or Regional Manager**

If the worker believes it is necessary in the circumstances to report to someone other than their manager, they can report the matter to:

- **The next highest level of management at Assistant Director, Director**

Where a worker believes it is necessary in the circumstances to report to someone other than their line manager or the next level of management the worker may report concerns to:

- **Designated Person**

Where it is intended to communicate the concern directly to the **designated person** for protected disclosures:

The report can be forwarded to:

Lucy O'Sullivan, lxosullivan@legalaidboard.ie, 066 947 1009 087 103 1496

Individuals may raise concerns in writing, by email or verbally, by telephone or in person.

If the worker reasonably believes there are circumstances preventing them from reporting their concerns within the line management structure, then the worker can contact the Designated Person directly.

Suggested Format for Making an Internal Disclosure:

- Give a description of the relevant wrongdoing.
- Provide any information that tends to show the relevant wrongdoing so as to assist in the assessment of the matters raised in the disclosure.
- Date the disclosure.
- Give your preferred contact details.
- State that the disclosure is made under the Protected Disclosures Act and state if you do/do not expect confidentiality.

External channels through which a disclosure can be reported

The PDA 2022 provides for external reporting of wrong-doing to appropriate authorities in circumstances where:

Reasonable belief that:

it came to attention in work-related context

- Information tends to show relevant wrongdoing;
- Information and any allegations are substantially true; and
- Relevant wrongdoing relates to matter for which person is prescribed

A 'Prescribed Person' is the external authority as prescribed by Ministerial Order (under Section 7 of the Protected Disclosures Act 2014). Prescribed Persons are normally the Regulating or Supervising Authority or Inspectorate with responsibility for dealing with any 'relevant wrongdoing' falling within the scope of the Protected Disclosure Act 2014 such as the Health and Safety Authority and the labour inspectorate in the Workplace Relations Commission. For more information on the 'Prescribed Person', please see [list of prescribed persons](#).

The 'Prescribed Person' may have their own procedures for making a disclosure and staff are encouraged to seek advice from their trade union, a legal representative or the Speak Up Helpline in advance of making a disclosure, see 'Guidance' below.

Disclosure to a Minister

A worker employed in a public body may make a protected disclosure to a Minister of the Government on whom any function relating to the Public body is conferred rather than to their immediate employer. In the case of Legal Aid Board workers, they can make a report to the Minister for Justice.

The evidential criteria for making a disclosure to the appropriate Minister is the same as that which applies to a disclosure made internally to an employer i.e. the worker reasonably believes that the information being disclosed shows or tends to show wrongdoing. However, there are additional requirements under the PDA 2022. It must come to attention of a worker in work-related context and the worker must have a reasonable belief that information tends to show relevant wrongdoing and is substantially true.

And meets one of the following conditions:

- Has reported internally and/or externally but reasonably believes no action or insufficient follow-up action taken;
- Reasonably believes the Head of the public body concerned is complicit in the wrongdoing;
- Reasonably believes wrongdoing may constitute imminent or manifest danger to public interest.

Other Persons

The PDA 2022 provides for external reporting to other persons.

Whilst there is no definitive list of who can or who cannot be an 'Other Person', instead the legislation requires the disclosure to the 'Other Person' to be 'reasonable' bearing in mind:

- the identity of the person to whom the disclosure is made;
- the seriousness of the relevant wrongdoing;
- whether the wrongdoing is continuing or is likely to occur in the future;
- any action which the employer of the worker or the person to whom the previous disclosure was made has taken, or might reasonably be expected to have taken as a result of the previous disclosure.

There are other criteria that must also be met such as the relevant wrongdoing must be sufficiently serious and the worker reasonably believes;

- that the information disclosed and any allegation in it is substantially true;
- that the disclosure is not made for personal gain; and
- in all circumstances of the case it is reasonable for the worker to make the disclosure.

In addition, one or more of the following conditions must be met:

- The person making a disclosure believes that they would be subject to penalisation by the employer if disclosure were to be made to the Board, a responsible person, a prescribed person, or the Minister.

- In the absence of a prescribed person, the person making a disclosure believes that disclosure to the Board or a responsible person would result in the destruction or concealment of evidence about the wrongdoing.
- The person has previously disclosed substantially the same information to the Board, a responsible person, a prescribed person, or the Minister.
- The subject matter of the disclosure is of an exceptionally serious nature.

The organisation encourages workers to make their disclosure internally, even if they have already made an external report. It is important that the Board are aware of any wrongdoing as soon as possible and also this enables us to protect the worker from any potential penalisation which could arise as a result of the disclosure.

If a worker is unsure whether to use the procedure or they want independent advice at any stage, they are encouraged to obtain external independent advice.

Guidance on making a Disclosure

The Board is a member of the Integrity at Work programme, a Transparency International (TI) Ireland initiative. Independent and confidential advice for anyone considering reporting a concern or making a protected disclosure is available via TI Ireland's Speak Up Helpline at 1800 844 866, Monday to Friday 10am to 6pm. You can also make an enquiry via secure online form or encrypted text. For further information, please see www.speakup.ie.

Where appropriate, the Helpline can refer callers to access free legal advice from the Transparency Legal Advice Centre. The Civil Service Employee Assistance Service may also be contacted for guidance, please see www.cseas.per.gov.ie or contact 0818 008120.

Confidentiality

Confidential reporting is where an individual makes a report on the understanding that their name and other identifying details will not be shared by the recipient.

The Legal Aid Board will take all reasonable steps to treat disclosures made through this policy in a confidential and sensitive manner, subject to the need to ensure the effective investigation of the alleged wrongdoing. The Board will not disclose the worker's identity without their written consent, unless it is required by law or necessary for the effective investigation of the alleged wrongdoing. It is considered that the principles of natural justice do not require a person associated with an allegation of wrongdoing to be notified of the receipt of an allegation. Nor does the person accused of wrongdoing have the right to know the identity of the worker who has made the report. Where an investigator wishes to question or seek information from the person accused of wrongdoing, the subject is entitled to be given details of what is alleged and given the opportunity to respond and to contest the allegation. In the interests of natural justice, the person/s against who 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. The reporting person and the person accused of wrongdoing is entitled to a copy of the investigation report.

From time to time, it may not be possible to provide details of the outcome of an investigation process to a discloser. A discloser should be informed that appropriate action has been taken but is not generally entitled to know what that action was.

This organisation is committed to protecting the identity of the worker raising a concern and ensures that relevant disclosures are treated in confidence. The organisation is also committed to maintaining the confidentiality of the person concerned, where possible.

The focus will be on the wrongdoing rather than the person making the disclosure. However, there are circumstances, as outlined in the Act, where confidentiality cannot be maintained particularly in a situation where the worker is participating in an investigation into the matter being disclosed. Should such a situation arise, we will make every effort to inform the worker in writing that his/her identity may be disclosed.

Anonymous reporting

Anonymous reporting is where an individual makes a report without leaving their name or identifying information. Confidential reporting is where an individual makes a report on the understanding that their name and other identifying details will not be shared by the recipient without the discloser's permission.

Reports or concerns expressed anonymously will be considered at the discretion of the designated person. In exercising this discretion the designated person will take into account; the seriousness of the issues raised, the credibility of the concern and the likelihood of confirming the allegation from attributable sources. Anonymous reports will be taken seriously however the effectiveness of any investigation may be limited where an individual chooses not to be identified.

The Board strongly encourages staff to identify themselves in making a report to facilitate the investigation. This will make it easier to assess the disclosure and to take appropriate action, and to protect the worker from penalisation.

Investigation – what happens once a disclosure is made?

Once a disclosure is made the process that is set out at Appendix II will be adopted. In line with the reporting cascade, all potential protected disclosures received by line managers will be referred to the Designated Person for assessment and follow up. If there matter is deemed a protected disclosure an investigation will be carried out. If not already notified, the reporting person will be advised of the name and contact details of the person who is handling the matter and may be asked to provide further assistance if required. The Designated Person will provide the reporting person written acknowledgement of receipt of the concern within 7 days and will provide feedback on progress of the investigation within three months and upon written request, three monthly intervals thereafter. A worker who is the subject of a disclosure is entitled to fair treatment. While an investigation is on-going, all reasonable steps will be taken to protect the confidentiality of those who are the subject of a protected disclosure pending the outcome of the investigation.

Protection from Penalisation

The PDA makes it a criminal offence to penalise a worker for making a disclosure. Workers should inform the Designated Person immediately if they have experienced an act of penalisation by any worker as a result of having made a protected disclosure.

Penalisation includes:

- suspension, lay-off or dismissal,
- demotion, loss of opportunity for promotion, or withholding of promotion,
- transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- coercion, intimidation, harassment or ostracism,
- discrimination, disadvantage or unfair treatment,
- injury, damage or loss,
- threat of reprisal,
- withholding of training;
- a negative performance assessment or employment reference;
- failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanent employment;
- failure to renew or early termination of a temporary employment contract;
- harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income;
- blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry;
- early termination or cancellation of a contract for goods or services;
- cancellation of a licence or permit, and psychiatric or medical referrals.

The Designated Person will investigate reports of penalisation. Any worker found to have penalised a worker may be subject to the organisation's disciplinary procedure and/or legal action.

Representation/Supports

Any worker making a protected disclosure or any worker against whom an allegation has been made must have their constitutional right to natural justice and fair procedures upheld in accordance with all relevant employment legislation. Workers subject of a protected disclosure have the right to seek independent legal advice and where appropriate requests for representation during the process may be considered.

Right of Appeal

A worker is entitled to appeal at any stage in this process and following any decision arising from the assessment stage or investigation stage of the process. Notice of appeal shall be in writing and must be submitted within 15 working days of the decision to the Director of Human Resources.

The appeal will be heard by an independent committee. No member of this committee/body will have been involved at any stage of the assessment or investigation stages of the process

Record Keeping

Records of concerns raised, including the outcome, will be maintained for a minimum of five years after the closure of the case. These records will be maintained in a confidential and secure environment. Reporting figures on all on protected disclosures will be included in the Board's Annual Report.

Review of Policy

The Legal Aid Board will review this policy every 12 months. Section 22 reports are published annually on the [Legal Aid Board website](#).

Legal Disclaimer: This document is not, nor is it intended to be, a definitive statement of the law and it does not constitute legal advice. Workers are encouraged to seek their own legal advice where necessary. The Board accepts no responsibility or liability for any errors, inaccuracies or omissions in this document

Appendix I Integrity at Work Pledge



THE INTEGRITY AT WORK PLEDGE

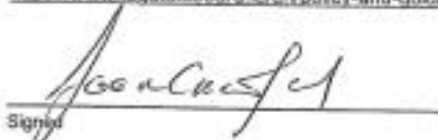
The Legal Aid Board recognises the importance of maintaining an ethical workplace and the valuable contribution of those who raise concerns about wrongdoing. We commit to not penalising, or permitting penalisation against, a worker* who reports risks or incidents of wrongdoing and to responding to or acting upon those concerns.

In committing ourselves to this pledge we will work towards implementing a whistleblowing/protected disclosures policy and procedures which will:

- a. Promote the reporting of wrongdoing or the risk of harm to a designated person inside the organisation or external bodies as appropriate.
- b. Provide comprehensive information about the types of disclosures that can be made, by whom and in respect of what.
- c. Encourage our workers to seek professional advice both prior or subsequent to making a report.
- d. Assure our workers that any report will be dealt with in the strictest confidence and that their identity or identifying information will not be disclosed to third parties unless required by law or necessary for the purposes of conducting an investigation.
- e. Provide our workers with sufficient notice and a timely explanation in the event that his or her identity is to be disclosed to a third party.
- f. Confirm that reports will be acted upon within a reasonable time frame and take whatever remedial action is deemed necessary by the organisation to address any wrongdoing or the risk of wrongdoing that might have been identified in response to the report.
- g. Commit to keeping any worker who makes a report informed on the progress of investigations.
- h. Provide for appropriate action to be taken against anyone found to have penalised a worker for (i) having reported wrongdoing or (ii) refusing to engage in wrongdoing.
- i. Additionally, the organisation commits to record anonymised data each year on i) the number of reports made to it under the Protected Disclosures Act 2014 (as amended), ii) the nature of each report, iii) the number of complaints of retaliation against workers who have made disclosures and iv) the action taken in response to each report.
- j. Share this data (as set out in paragraph i) with senior management, including the Board, or with the Minister for Public Expenditure and Reform (where appropriate).
- k. Ensure that our managers and responsible persons are aware of our commitments under this Pledge and related policies and procedures and are adequately trained in handling a report.
- l. Publicise our commitment to the Integrity at Work initiative with our workers and other relevant stakeholders.

* Worker refers to employees, contractors, consultants, agency staff, job applicants, trainees, interns, volunteers, shareholders, members of the administrative, management or supervisory body including non-executive members.

Details of our Protected Disclosures Policy and Procedures can be found on our website at <https://www.legalaidboard.ie/en/policy-and-guidance/protected-disclosures/>


Signed

Chief Executive
Position Held
19 OCT 2023
Date


Signed

Director HR
Position Held
19 OCT 2023
Date

Appendix II

Guidance for line managers in dealing with disclosures

All reported disclosures about perceived wrongdoing in the workplace must be treated seriously.

The manager to whom a concern is disclosed should:

- Record the disclosure and the steps taken to deal with it.
- Inform the Designated Person, Ms Lucy O'Sullivan
- Clarify the basis of the concerns raised with the worker.
- Establish what evidence is available to support the concern.
- If, on preliminary examination, the allegation is judged to be wholly without substance or merit,, Or is not considered a protected disclosure and does not fall within the remit of this procedure dismiss the allegation and inform the person who made the report.
- If, on preliminary examination, there appears to be prima facie substance to the allegation proceed with an investigation or appoint a qualified person to carry out the investigation.
- Risk assess the issue and take immediate action if the alleged wrongdoing involves a serious loss or danger to others.
- Carry out relevant enquiries promptly, sensitively and discretely, taking all reasonable steps to protect the identity of the reporting person..
- If it is necessary to reveal the worker's identity to undertake an effective enquiry, consult with the worker. Good practice would be to obtain express written consent before identity is disclosed
- Obtain evidence from any relevant witnesses.
- Assess whether the disclosure report is based on:
 - a reasonable belief but ungrounded,
 - a reasonable belief and grounded, or
 - a deliberately false report.
- Take appropriate action if the disclosure is grounded.
- Provide diligent follow up and written feedback to the worker within 3 months, and where possible provide information to the reporting person on the outcome of the investigation;
- Provide 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;
- Report the outcome and in the case of managers forward all records to Designated Person and the Director of Human Resources. The Designated Person should forward all records in their possession to the Director of Human Resources.

Appendix II
Internal reporting process workflow

