



Comhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

External Reporting of Protected Disclosure Procedures

1. Overview

The Protected Disclosures Act 2014 was introduced to allow workers (reporting persons) to disclose information about wrongdoing in the workplace by making sure reporting persons who speak up are protected from penalisation. The Act also provided internal, external and regulatory ways to make a disclosure.

In 2019, the European Union adopted Directive 2019/1937 on the protections of persons who report breaches of Union Law and an amendment to the existing legislation was required to implement the Directive's provisions. Updated legislation was also required to take account of the GDPR and amended Freedom of Information legislation. Consequently, the Protected Disclosures (Amendment) Act 2022 was signed into law on the 21st July 2022.

2. Purpose

The primary purpose of the Protected Disclosures legislation is to promote and encourage the development of a positive workplace culture in which raising concerns regarding potential wrongdoing is valued and appropriate action is taken by public bodies in response to such disclosures.

Specifically the key objectives of the legislation are as follows:

- To encourage reporting persons to raise reasonable concerns regarding possible wrongdoing in the workplace so that these concerns can be addressed;
- To underpin a working environment, the primary focus of which is on responding to the “message” (i.e. the report of wrongdoing) rather than on the “messenger” (i.e. the reporting person making the report).
- To reinforce the legal requirement that public bodies should not penalise a reporting person who makes a protected disclosure;
- To ensure that a competent and timely assessment and investigation of reports of wrongdoing takes place followed, where necessary, by an appropriate response.

3. Introduction

These procedures outline the process for making a protected disclosure on wrongdoing, as defined in the protected disclosures legislation, to the Chief Executive, Dublin City Council as a prescribed person, using external reporting channels.

Section 7 of the Act provides that a worker (reporting person) may make a disclosure to a person designated by the Minister for Public Expenditure and Reform. Such persons are

referred to as “prescribed persons”. The full list of prescribed persons is available at <https://www.gov.ie/prescribed-persons>

The Chief Executive, Dublin City Council is deemed to be a prescribed person for all matters relating to Dublin City Council functions under the Local Government Acts 1925 to 2019 or under any other legislation.

A reporting person may make a protected disclosure to the Chief Executive if they reasonably believe that the relevant wrongdoing falls within the remit of their functions. There is an additional requirement that the reporting person reasonably believes that the information disclosed, and any allegations contained in it are substantially true.

4. Protected Disclosure Definition

A Protected Disclosure is defined in the legislation as a disclosure of information which, in the reasonable belief of the worker, tends to show one or more ‘relevant wrongdoings’, which came to the attention of the worker in a work related context and is disclosed in the manner prescribed in the Act.

The following matters are relevant wrongdoings and may relate to matters that are occurring now, have happened in the past or may happen in the future:

- (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 reporting person’s contract of employment or other contract whereby the reporting person 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, or
- (h) that a breach has occurred, is occurring or is likely to occur, or
- (i) that information tending to show any [of 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.”

A matter concerning interpersonal grievances exclusively affecting a reporting person, such as grievances about interpersonal conflicts involving the reporting person and another worker or a complaint to an employer or about an employer which concerns the reporting person exclusively is not a relevant wrongdoing for the purposes of the legislation.

5. Definition of a Worker (Reporting Person)

For the purposes of the Act, a worker means an individual who has acquired information on a relevant wrongdoing in a work-related context and includes the following:

- a) an individual who is or was an employee,
- b) an individual who entered into or works or worked under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertook to do or perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party's business,
- c) an individual who works or worked for a person in circumstances in which
 - i) the individual is introduced or supplied to do the work by a third person, and
 - ii) the terms on which the individual is engaged to do the work are or were in practice substantially determined not by the individual but by the person for whom the individual works or worked, by the third person or by both of them,
- d) an individual who is or was provided with work experience pursuant to a training course or programme or with training for employment (or with both) otherwise than under a contract of employment,
- e) an individual who is or was a shareholder of an undertaking,
- f) an individual who is or was a member of the administrative, management or supervisory body of an undertaking, including non-executive members,
- g) an individual who is or was a volunteer,
- h) an individual who acquires information on a relevant wrongdoing during a recruitment process, and
- i) an individual who acquires information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process referred to in (h) above).

6. Reasonable Belief

A reporting person may make a protected disclosure to a prescribed person if the reporting person reasonably believes that the relevant wrongdoing falls within the matters for which the prescribed person is prescribed.

The following conditions must apply to a disclosure to the prescribed person:

- It must have come to the reporting person's attention in a work related context

- They must have a reasonable belief that the information disclosed shows a wrongdoing
- They must have a reasonable belief that the information disclosed and any allegation contain in it, are substantially true

No reporting person will be penalised for submitting a protected disclosure if it is subsequently established that they were mistaken in their belief that wrongdoing was occurring provided that that they had a reasonable belief that the information that was disclosed showed or tended to show wrongdoing.

7. Procedure for the Making of a Protected Disclosure Externally

All relevant information relating to the disclosure should be communicated to the Designated Officer for receiving external Protected Disclosures. Dublin City Council has designated a Senior Executive Officer, Human Resources Department, as Designated Officer to receive external disclosures. (email: protecteddisclosuresexternal@dublincity.ie). A designated telephone number (Ph. 222 3003) is also available for the reporting of external protected disclosures.

The disclosure under this policy must be made in writing or verbally to the Designated Officer. In the event of a reporting person making a verbal disclosure, their disclosure will be recorded by the Designated Officer and signed by the reporting person as an accurate record of the disclosure.

The details given to the Designated Officer will facilitate the assessment as to whether a disclosure warrants investigation. The specific nature of the potential wrongdoing should be communicated at the time the disclosure is made along with the date of the disclosure and stating whether the disclosure is made under the Protected Disclosures Act and if the reporting person expects confidentiality/does not expect confidentiality.

A disclosure must be made in the manner set out in these procedures in order to gain the protections provided in the legislation.

7.1 What details should the disclosure include?

A protected disclosure should contain “information” which tends to show wrongdoing. The ordinary meaning of disclosing “information” is conveying facts, with specific, factual detail, such as stating what has occurred/is occurring and how. This is different to simply making an allegation based on a suspicion that is not founded on anything tangible.

At minimum, the disclosure should include the following details:-

- a. The discloser's name, position in the organisation, place of work and contact details
- b. the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- c. whether or not the alleged wrongdoing is still ongoing;
- d. whether the alleged wrongdoing has already been disclosed to any member of management and if so when and to what effect;
- e. the details of the alleged wrongdoing and any supporting information;
- f. the name of the person(s) (if known or applicable) allegedly involved in the alleged wrongdoing;
- g. any other relevant information
- h. that the report is a protected disclosure and is being made under the procedures

A Protected Disclosure form is available in Appendix A.

While a disclosure may be made anonymously through the through the external reporting channel, the extent to which these procedures can be applied and implemented is significantly restricted in the case of anonymous disclosures. It should also be noted that an individual cannot obtain redress under the Act without identifying themselves as part of the process of seeking redress.

The reporting person who raises a concern should not carry out an investigation outside of the normal scope of their duties with a view to seeking to confirm relevant wrongdoing. In addition, they are still required to conduct themselves professionally and to continue to carry out their duties as normal.

8. Protected Disclosure Process

8.1. Acknowledgement

The receipt of protected disclosure reports will be acknowledged with 7 days of its receipt.

The acknowledgment will provide further detail on the following:

- The protected disclosures process,
- Details of next steps,
- Protections afforded the employee submitting the protected disclosure from a protection of identity and penalisation perspective,
- Type of feedback that will/won't be provided.

8.2. Initial Assessment

On receipt of the protected disclosure, an initial assessment of the disclosure will be undertaken by the Designated Officer to receive protected disclosures. This assessment will seek to determine if there is prima facie evidence that a relevant wrongdoing may have occurred and will also examine whether the report falls within the scope of the functions for which the Chief Executive, Dublin City Council, has responsibility.

If the assessment determines that there is no prima facie evidence that a wrongdoing has occurred, the matter will be closed. In the event that the Designated Officer is of the view that no further investigation is required, the reporting person will be advised of this assessment and the basis for the assessment, insofar as is possible.

If the initial assessment shows that the report concerns matters that are not within the scope of the functions for which the Chief Executive, Dublin City Council, has responsibility, the report will be transmitted to the relevant prescribed person, or where there is no such other person, the Protected Disclosures Commissioner.

If the initial assessment shows that there is a relevant wrongdoing but that it is clearly minor and does not require further follow up, the matter can be closed.

If the initial assessment shows that the report does not contain any meaningful new information about a relevant wrongdoing compared to a past report where the procedures have been concluded, unless new legal or factual circumstances justify a different follow up, the matter can be closed.

The reporting person will be informed, as soon as practicable, if any of these outcomes arise, and the reason for the decision.

8.3 Investigations

If, after initial assessment, the Designated Officer determines that there is prima facie evidence that a relevant wrongdoing may have occurred, appropriate action will be taken to address the wrongdoing. This will normally involve whether the alleged wrongdoing can or should be investigated and if so, what steps should be taken. If an investigation is required, Dublin City Council will consider the nature and extent of the investigation required. This could consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoing, or an external investigation by another body.

The reporting of a protected disclosure to the Chief Executive, as a prescribed person, are likely to involve individuals who are not employees of Dublin City Council but rather are individuals and organisations in the sector(s) the City Council is responsible for regulating or supervising. The Chief Executive will rely on the statutory powers given to it under legislation in order to carry out effective follow up and investigation of disclosures.

Where a report of a disclosure concerns a breach of EU law, as provided for in the Act, the Chief Executive must send the information to the relevant EU bodies as soon as practicable, where this is provided for under EU or Irish law.

Where considered necessary, terms of reference, which will determine the scope, and conduct of the investigation will be drawn up. Regardless of the approach taken, the principles of natural justice and fair procedures will apply. Respondents will have the right to know the allegations against them and the right to a fair hearing. This may include a right to challenge the evidence against them. This right will need to be balanced against rights in the legislation, such as the right of the reporting person to have their identity protected.

In general, the respondent's right to representation will be limited to a co-reporting person or trade union representative. There is no automatic right to legal representation at investigation meetings. In addition, the respondent has no legal right to have legal costs paid by Dublin City Council. This equally applies to legal representation and payment of legal costs for the reporting persons.

A right to legal representation will only arise in exceptional cases.

8.4 Feedback

Feedback will be provided to the reporting person within three months of acknowledgement of receipt of the protected disclosure or within 3 months of date of receipt of disclosure. This can be extended to 6 months where it is justified due to the particular complexity of the matters disclosed in the protected disclosure. The reporting person can request in writing that they wish to receive further feedback after the initial three-month period/six month period until such time as the protected disclosure process is closed.

The legislation defines feedback as the provision of information to the reporting person on the action envisaged or taken as follow-up and the reasons for that follow-up. Follow up is defined

as any action taken to assess the accuracy of the information submitted and, where relevant, to address the wrongdoing reported.

The format and detail of the feedback will be such to not prejudice the outcome of any investigation or any action that ensues by undermining the right to fair procedures. Any such feedback is provided in confidence and should not be disclosed by the reporting person, other than to their legal advisor or trade union representative.

8.5 Review of Decisions

Decisions and actions taken by Dublin City Council on foot of the receipt of an external protected disclosure can be reviewed, if requested by a party affected by any of the following processes:

- The conduct or outcome of any follow-up actions (including any investigation) taken on foot of the receipt of a protected disclosure
- The conduct or outcome of any investigation into a complaint of penalisation; and
- Any decision to disclose the identity of a reporting person (except in exceptional circumstances)

The purpose of the review will not to re-investigate the matter in question and will only address specific issues that the party in question believes have received insufficient consideration. The outcome of the review will be final and there will be no further entitlement to further reviews of the same issue.

9. Protections under the Act.

The legislation provides for certain protections for those submitting protected disclosures. These include protections against penalisation and keeping their identity confidential, with certain exceptions. Penalisation and the breaching of confidentiality is a criminal offence. Examples of penalisation include but is not limited to the following:

- 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 reporting person had a legitimate expectation that they would be offered permanent employment;
- failure to renew or early termination of a temporary employment contract;
- harm, including to the reporting person'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

9.1 Claims of Penalisation

Complaints of penalisation are separate to the protected disclosure and should be dealt with under the HR policies and procedures of the relevant organisation unless this is inappropriate in the circumstances.

External remedies open to reporting persons who believe that they have been penalised include a claim before the Workplace Relations Commission (within 6 months of the penalisation) and the Circuit Court (within 21 days of the last instance of penalisation).

10. Confidentiality

The Designated Officer who is designated to receive a reporting person's disclosure under this policy and any other employee to whom the disclosure is referred in the performance of that employees/person's duties, must take all reasonable steps to avoid disclosing to another person any information that might identify an employee who has made a protected disclosure.

The following exceptions apply:

- The person to whom the disclosure was made or transmitted shows that they took all reasonable steps to avoid such disclosure.
- The person to whom the disclosure was made or transmitted had a reasonable belief that it was necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment;
- Where the disclosure is otherwise required by law;
- Where the disclosure is a necessary and proportionate obligation imposed by Union law or the law of the State in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned.

In the circumstances detailed above, an employee will be informed if it becomes clear that it is not possible to maintain their confidentiality unless the notification would jeopardise .

- The effective investigation of the wrongdoing,
- The prevention of serious risk to the security of the State, public health, public safety or the environment, or
- The prevention of crime or prosecution of a criminal offence.

11. Protection of the rights of the person against whom an allegation of wrongdoing has been made

The principles of natural justice and fair procedures will be complied with as appropriate where an allegation of wrongdoing is made and the disclosure has been recorded and assessed as to warranting investigation.

In specific terms, in such circumstances, the person against whom the allegation of wrongdoing has been made will be advised of the following in writing:

- i. that an allegation has been made against them (this should be made formally);
- ii. that the disclosure has been recorded and is being formally investigated by a named individual in order to establish the facts
- iii. that no conclusions have been drawn until the facts have been investigated;
- iv. that they are expected to assist the investigator as far as is reasonably possible;
- v. that the investigator wishes to interview them at a specific time and place
- vi. that they may have a person of their choice present at the interview (i.e. a legal representative, an interpreter, a union representative, a colleague, a peer support from their workplace, etc.);

- vii. they have the right to make a statement in respect of the allegation(s) made against them either orally and/or in writing;
- viii. as far as is reasonably possible, their confidentiality and privacy will be respected.

12. Protection from dismissal/penalisation

A reporting person who has a reasonable belief in relation to a serious wrongdoing in connection with their employment and discloses that concern will not be penalised for the making of that disclosure, even if (a) no investigation subsequently takes place, or (b) where an investigation does take place, the investigation finds that no wrongdoing occurred. This undertaking extends to any other employee/reporting person who is required to provide information in relation to matters raised as a consequence of the disclosure.

13. Withdrawal of a protected disclosure

Once a protected disclosure has been made, it is not possible for a reporting person to withdraw the disclosure. Reporting persons are required to co-operate with a prescribed person, the Commissioner, or a person to who a report is transmitted.

Where co-operation is withdrawn or the reporting person seeks to withdraw a protected disclosure, public bodies and prescribed persons are still required to comply with the legislation to the greatest extent possible.

14. Audit Committee Protocol

The City Council's Audit Committee has adopted a Protocol to provide for referral to the Designated Officer of any concern raised with the Chair of the Audit Committee. The roles of the Audit Committee (as set out in the Local Government (Audit Committee) Regulations 2014 relates to financial matters such as " possible irregularities in financial reporting or other financial matters

Appendix A



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Strictly Confidential

Form for Reporting a Protected Disclosure to the Chief Executive, Dublin City Council as a Prescribed Person

NAME <i>(Optional)</i> :	
AREA OF WORK <i>(Optional)</i> :	
CONTACT DETAILS <i>(Optional)</i> :	

1. Please give date of alleged wrongdoing (if known) or date the alleged wrongdoing commenced or was identified: _____
2. Is the alleged wrongdoing ongoing? Yes No
3. Has the alleged wrongdoing already been disclosed to any member of management or another employee/reporting person? Yes No

If so when was the wrongdoing disclosed and to what effect?

4. Please give details of alleged wrongdoing and any supporting information:

5. Please give name of the person(s) (if known or applicable) allegedly involved in alleged wrongdoing: _____

6. Any other relevant information: