



# Legal Services Regulatory Authority

## Protected Disclosures Policy and Procedures

## **1.0 Introduction**

- 1.1 The Protected Disclosures Act, 2014 came into operation on 15 July 2014. The purpose of the Protected Disclosures Act 2014 ('the Act') is to provide a robust statutory framework within which "workers" can raise concerns regarding potential wrongdoing that has come to their attention in the workplace.
- 1.2 As per section 3 of the 2014 Act, the term "worker" includes LSRA employees, contractors, staff seconded to the LSRA, trainees, agency staff, former employees and interns.
- 1.3 Section 21 of the Protected Disclosures Act requires every public body to establish and maintain written procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures.
- 1.4 The Minister for Public Expenditure and Reform has issued "*Guidance under section 21(1) of the Protected Disclosures Act, 2014 for the purpose of assisting public bodies in the performance of their functions under the Act*". Under section 21(4) of the 2014 Act the LSRA is required to have regard to the guidance issued by the Minister in performing its functions under section 21. This policy has been drafted with regard to the Minister's guidance and in compliance with the obligations of the Protected Disclosures Act, 2014.

## **2.0 Policy Statement**

- 2.1 The purpose of this policy is to encourage and facilitate avenues for "workers" to raise concerns within the workplace of the LSRA so that appropriate action can be taken. Under this policy, any worker is entitled to raise concerns or issues or to disclose information without fear of penalisation or the threat of less favourable treatment, discrimination or disadvantage.
- 2.2 The LSRA Executive is committed to creating a workplace culture that encourages the making of protected disclosures and that provides the necessary protections for disclosers.

## **3.0 Values and Principles**

- 3.1 As part of the LSRA Strategic Plan, the LSRA has adopted Transparency and Accountability as one of its core values. The Legal Services Regulatory Authority ('LSRA') is committed to developing an open and transparent internal culture and will insist on the highest standards of honesty and accountability so that the LSRA staff can report any concerns in confidence.

3.2 It should be noted that if you have a concern in relation to your own employment or personal circumstances within the workplace, it might better be dealt with under the relevant grievance procedures.

3.2 This policy does not replace any legal reporting or disclosure requirements already in existence. If statutory reporting requirements and procedures exist, these must be complied with.

3.3 The Key Principles informing the policy<sup>1</sup> are as follows:

*1. All disclosures of wrongdoing in the workplace shall, as a matter of routine, be the subject of an appropriate assessment and/or investigation and the identity of the discloser shall be adequately protected; and*

*2. Providing that the worker discloses information relating to wrongdoing, in an appropriate manner, and based on a reasonable belief, no question of penalisation shall arise.*

#### **4.0 Aims and Scope of this Policy**

4.1 This policy aims to:

- create an open environment in which you feel confident and secure in raising concerns and disclosing information;
- provide a suitable avenue for you to raise concerns in confidence;
- ensure that you receive feedback, where possible, of any action taken;
- reassure you that you will be protected from penalisation or any threat of penalisation.

4.2 The DPER Guidance on protected disclosures states that having appropriate procedures in place *“is central to encouraging workers to make disclosures directly to their employer rather than to a person outside the public body.”*

4.3 The DPER Guidance further note that internal disclosures facilitate public bodies, in for example:-

- Deterring wrongdoing in the public service;
- Ensuring early detection of and remediation of potential wrongdoing;
- Reducing the risk of leaking of confidential information;
- Demonstrating to interested stakeholders, regulators and the courts that the public body is accountable and managed effectively;
- Improving trust and ethical organisational culture; and
- Limiting the risk of reputational and financial damage.

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<sup>1</sup> In line with paras 1.1-1.2 of the DPER Guidance

4.4 The LSRA Executive intends that these procedures will provide a safe platform for workers who wish to make a protected disclosure to do so in the confidence that they enjoy the protections available under the 2014 Act.

## **5.0 What is a protected disclosure?**

5.1 A protected disclosure, under the 2014 Act, is a disclosure of information which, in the reasonable belief of the worker, tends to show one or more relevant wrongdoings; came to the attention of the worker in connection with the worker's employment and is disclosed in the manner prescribed by the Act.

5.2 This definition is broken down and explained in the following paragraphs.

## **6.0 Information**

6.1 A protected disclosure should contain "*information*" which tends to show wrongdoing. The ordinary meaning of disclosing "*information*" is conveying facts, such as stating that particular events have occurred. Under the DPER Guidance this is distinguished from simply making an allegation on the basis of a suspicion that is not founded on tangible evidence.

6.2 Under section 5(2) of the Act information can be considered to be "*relevant information*" if:

(a) in the reasonable belief of the worker, it tends to show one or more relevant wrongdoings, and

(b) it came to the attention of the worker in connection with the worker's employment.

## **7.0 Relevant Wrongdoings**

7.1 Under Section 5(3)(a)-(h) of the 2014 Act, relevant wrongdoing includes:

- a) That an offence has been, is being, or is likely to be, committed;
- b) Failing to comply with legal obligations, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or to 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 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 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 information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed.

7.2 Section 5(4) of the 2014 Act states that it is immaterial whether a relevant wrongdoing occurred, occurs or would occur in the State or elsewhere and whether the law applying to it is that of the State or that of any other country or territory.

- 7.3 A matter is not a relevant wrongdoing if it is a matter, which it is the function of the worker or the worker's employer to detect.
- 7.4 A disclosure of information in respect of which a claim to legal privilege could be maintained in legal proceedings is not a protected disclosure if it is made by a person to whom the information was disclosed in the course of obtaining legal advice. This means that legal advisors are excluded from the protections of the 2014 Act, where information comes to their attention whilst providing legal advice. Where a claim of legal professional privilege would be maintained in respect of such information, it will not be a protected disclosure if it is disclosed by the legal advisor.
- 7.5 The motivation for making a disclosure is irrelevant to whether or not it is a protected disclosure.

## **8.0 Reasonable Belief**

- 8.1 A worker must have a reasonable belief that the information they possess tends to show wrongdoing. The term "*reasonable belief*" does not mean that the belief has to be correct. An employee is entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.
- 8.2 It may be quite reasonable for a worker to believe that a wrongdoing is occurring on the basis of what he or she observes. A worker is not required or entitled to investigate matters themselves to find proof of their suspicions and should not endeavour to do so. In such a case the worker may have reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the worker was mistaken.
- 8.3 No worker will be penalised simply for getting it wrong, so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.
- 8.4 Any worker who makes a protected disclosure and who has a reasonable belief of wrongdoing will not be penalised by the LSRA, even if such concerns or disclosures turn out to be unfounded.
- 8.5 Penalisation is defined at section 3(1) of the Act as follows:

*"Penalisation"* means any act or omission that affects a worker to the worker's detriment, and in particular includes-

- (a) suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,

- (d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- (e) unfair treatment,
- (f) coercion, intimidation or harassment,
- (g) discrimination, disadvantage or unfair treatment,
- (h) injury, damage or loss, and
- (i) threat of reprisal.

8.6 If you believe that you are being subjected to penalisation as a result of making a disclosure under this procedure, you should inform the Protected Disclosures Manager immediately. An assessment or, when necessary, an investigation into any claim of penalisation shall be carried out. If you are not satisfied with the outcome of that assessment or investigation, you may seek a review. The procedure for requesting a review is set out below at para 21.0.

8.7 The penalisation of any worker who has made a disclosure will not be tolerated in the LSRA. Any worker who penalises or retaliates against a person who has raised a concern under this policy will be subject to an investigation, which may include suspension, dismissal and/or disciplinary action where necessary.

8.8 It should be noted, however, that if a worker has been found to have raised a concern or disclosed information due to a malicious or vexatious intent or without a reasonable belief that the information showed or tended to show wrongdoing, then they may be subject to appropriate disciplinary action.

## **9.0 In Connection with the Worker's Employment**

9.1 The information must come to the attention of the worker in connection with his/her employment, but a disclosure of wrongdoing which is the worker's, or the worker's employer's function to detect, investigate or prosecute does not come within the terms or attract the protections of the 2014 Act unless it involves an act or omission on the part of the employer.

## **10.0 Protecting the Identity of any Worker Who Makes a Disclosure**

10.1 The LSRA is committed to protecting the identity of any worker who raises a concern and shall seek to ensure that relevant disclosures are treated appropriately.

10.2 Section 16(1) of the 2014 Act imposes an obligation to protect the identity of the discloser as follows, *"A person to whom a protected disclosure is made, and any person to whom a protected disclosure is referred in the performance of that person's duties, shall not disclose*

*to another person any information that might identify the person by whom the protected disclosure was made.”*

10.3 Under Section 16(2) subsection 16(1) of the 2014 Act, does not apply if:

- The person to whom the protected disclosure was made or referred shows that he or she took all reasonable steps to avoid so disclosing any such information,
- The person to whom the disclosure was made or referred reasonably believes that the person by whom the protected disclosure was made does not object to the disclosure of any such information,
- The person to whom the disclosure is made reasonably believes that disclosing such information is necessary for-
  - (i) the effective investigation of the relevant wrongdoing concerned,
  - (ii) the prevention of serious risk to the security of the State, public health or the environment, or
  - (iii) the prevention of crime or prosecution of a criminal offence.
- The disclosure is otherwise necessary in the public interest or is required by law.

10.4 A failure to protect their identity is actionable by the person who made the protected disclosure if that person suffers any loss by reason of the failure.

10.5 If a person dealing with your protected disclosure decides that it is appropriate to disclose your identity, they will (save in exceptional cases) advise you of this decision. You can seek to have this decision reviewed – see procedures at para 21.0 below.

10.6 The identity of any person who makes a protected disclosure will not be stored in any manner of physical or electronic document that is publicly accessible and will instead be kept in secure storage with access restricted to the Protected Disclosures Manager.

## **11.0 Anonymous Disclosures**

11.1 It should be noted that there is a difference between an anonymous disclosure, where identity is withheld by the discloser, and confidential disclosures, where identity is protected by the recipient.

11.2 Anonymous disclosures are not excluded from the protection of the 2014 Act. The LSRA will act upon any anonymous disclosures to the extent that this is possible. It should be noted that the LSRA may be restricted in its ability to investigate any matter in the absence of the knowledge of the identity of the discloser. Therefore, whilst it is possible to raise a concern anonymously, you are encouraged to disclose your identity when raising a concern as this will make it easier to assess the disclosure and to take the appropriate action.

## **12.0 Procedures for raising a concern**

### **12.1 Who Should You Raise Your Concern With?**

The first point of contact for raising appropriate concerns is your immediate manager or their superior. However, if such an avenue is not available to you, you should approach the Protected Disclosures Manager. The Secretary to the Authority, Ultan Ryan, is the Protected

Disclosures Manager and he is authorised to operate as the internal disclosure channel in accordance with section 6(2) of the Protected Disclosures Act 2014.

### **13.0 How To Raise A Concern**

- 13.1 Concerns may be raised verbally or in writing. In the event that you wish to raise a concern verbally, you should request a private meeting with your immediate line manager or their superior or the Protected Disclosures Manager. A written record of this conversation will be made and you will be provided with a copy of this record after the meeting.
- 13.2 If you wish to raise a concern in writing, it is advised that you give all the relevant details possible such as to the background of the concern, dates, sequence of events and description of circumstances. A form is attached in the Appendix to this document which you might find useful in raising your concern.
- 13.3 All concerns should be raised at the earliest possible juncture in order to deal with the matter quickly and effectively. The DPER Guidance suggests that persons making a protected disclosure should be encouraged to frame it in terms of the information that has come to their attention rather than seeking to draw conclusions about particular individuals or specific offences.

### **14.0 Further Action**

- 14.1 Upon raising your concerns with us, a meeting will be arranged to discuss the matter with you on a strictly confidential basis. This meeting will be used to clarify if the matter falls within this procedure or is more appropriately dealt with by, for example, a grievance procedure.
- 14.2 You can choose whether or not you want to be accompanied by a colleague. In regard to confidentiality, it is important that there should be an awareness of respecting sensitive company information, which, while unrelated to the disclosure, may be disclosed in the course of a consultation or investigation process.

### **15.0 How We Will Deal With Your Disclosure**

- 15.1 Upon clarifying that this is the appropriate forum for your disclosure, there will be an initial assessment to examine what actions are to be taken. This may involve clarifying certain aspects of the disclosure, clearing up misunderstandings or resolving the matter by agreed action without the need for an investigation.
- 15.2 Following the initial assessment, if it is concluded that there are grounds for concern that cannot be adequately dealt with at that point, an investigation will be carried out in a fair, transparent and objective manner. The form and scope of the investigation shall depend on the subject matter of the disclosure.

- 15.3 Disclosures may, in the light of the seriousness of the matters raised, be referred immediately to the appropriate authorities. Likewise if urgent action is required (for example, to remove a health and safety hazard), this action will be taken without any delay.
- 15.4 It is important to us that you feel assured that a disclosure made by you under this policy is taken seriously and that you are kept informed of steps being taken by us in response to your disclosure. In this regard, we undertake to communicate with you as follows:
- We will acknowledge receipt of your disclosure and arrange to meet with you as outlined above;
  - We will inform you of how we propose to investigate the matter and keep you informed of actions, where possible. This will include informing you of the outcome of any investigation, and, should it be the case, why no further investigation will take place. However, it is important to note that sometimes the need for confidentiality and legal considerations may prevent us from giving you specific details of an investigation.
    - We will inform you of the likely time scales in regard to each of the steps being taken but in any event we commit to dealing with the matter as quickly as practicable.
- 15.5 It is possible that in the course of an investigation you may be asked to clarify certain matters. To maximise confidentiality such a meeting can take place off site and you can choose whether or not to be accompanied by a colleague.
- 15.6 Where a concern is raised or a disclosure is made in accordance with this policy, but the allegation is subsequently not upheld by an investigation, no action will be taken against the worker making the disclosure and the worker will be protected against any penalisation. It is important to note that if an unfounded allegation is found to have been made without “reasonable belief” (see paragraph 8.0), then disciplinary action may be taken.
- 15.7 If you are not satisfied with the outcome of an investigation of your protected disclosure, you can seek a review – see paragraph 21.0.

## **16.0 Protection of the Rights of Respondents**

- 16.1 When an allegation is made against an individual, the respondent, the LSRA will ensure that the respondent is afforded appropriate protection. In particular, the LSRA will ensure that the respondent will have their right to natural justice and fair procedures upheld.
- 16.2 In the majority of cases, the Respondent will be given an opportunity to respond to and/or challenge the evidence in the case. This right, however, will be balanced against the rights afforded to the person making the protected disclosure under the 2014 Act such as the discloser’s right to have his/her identity protected.
- 16.3 Whether it is necessary to disclose the identity of the discloser, or not, will depend upon the facts of the case, which may include, for example, whether any allegation is made against an individual and the nature of that allegation. The discloser recipient will need to consider such matters when determining whether a protected disclosure can be

investigated and the nature of any investigation. As per the DPER Guidance on Protected Disclosures persons making a protected disclosure are encouraged to frame it in terms of information that has come to their attention rather than seeking to draw conclusions about particular individuals or specific offences.

- 16.4 Care will be taken to ensure that evidence gathered in the investigation of a protected disclosure could, if required, be used in a disciplinary process should evidence indicate that one was warranted.

## **17.0 Internal or External Disclosures**

- 17.1 The LSRA intends that this policy will provide a suitable avenue within the workplace to deal with concerns or disclosures in regard to wrongdoing. We are confident that issues can be dealt in an appropriate manner by the LSRA and we encourage workers that where appropriate to report such concerns internally. DPER Guidance on Protected Disclosures states as follows:

*“It should be possible in most, if not all cases, for workers to make protected disclosures to their employer. While public bodies cannot oblige workers to make a protected disclosure internally before making it externally, the Procedures should encourage workers to do so. It should be confirmed that internal disclosures will be taken seriously and the worker making the disclosure will receive appropriate protection.”*

- 17.2 Whilst all staff are encouraged to make any required protected disclosures internally, we also acknowledge that there may be circumstances where an employee wants to make a disclosure externally, and the Protected Disclosures Act, 2014 provides for a number of avenues in this regard. We would encourage all staff to familiarise themselves with the Protected Disclosures Act, 2014 in its entirety and we would encourage staff to revisit the 2014 Act and consider sections 6 through 10 in deciding who to make the disclosure to.
- 17.3 Different standards apply depending on to whom the disclosure is made.

## **18.0 External Disclosures to ‘Prescribed Persons’ and ‘Others’**

- 18.1 The 2014 Act allows workers to make a protected disclosure to persons other than their employer in certain circumstances. Different requirements need to be met in different cases, as set out at (a) to (e) below.

### **(A) Other Responsible Person**

Where the worker reasonably believes that the wrongdoing relates to the conduct of a person other than the worker’s employer or to something for which that other person has legal responsibility, then the worker can disclose to that other person.

## **(B) A Prescribed Person**

Certain persons are prescribed by S.I. 339/2014 Protected Disclosures Act 2014 (Section 7(2)) Order 2014 (as amended) to receive protected disclosures (“prescribed persons”). This includes the heads or senior officials of a range of statutory bodies.

A worker may make a protected disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under SI 339 of 2014. However, the Act also provides an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, is substantially true.

At present, no member of the Legal Services Regulatory Authority (‘LSRA’) is a prescribed person for the purposes of section 7(2) of the Protected Disclosure Act 2014.

## **(C) A Minister of the Government**

If a worker is or was employed in a public body, the worker may make a protected disclosure to the Minister on whom any function related to the public body is conferred or imposed by or under any enactment. The Minister with primary statutory functions in relation to LSRA is the, Minister for Justice and Equality.

## **(D) A Legal Adviser**

The 2014 Act allows a protected disclosure to be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in section 6 of the Trade Union Act 1941).

## **(E) Alternative external disclosures (in very limited circumstances) (section 10)**

While it is preferable in most circumstances to make an internal disclosure or if that is not appropriate, to use one of the options at (a) to (d) above there are stringent requirements for alternative external disclosures to qualify as protected disclosures under section 10 of the Act.

It will rarely be appropriate to make alternative external disclosures where the disclosure could be dealt with through one of the other disclosure options above.

Under section 10 of the 2014 Act, the protections will only be available if the following conditions are met:

- The worker must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true; and
- The disclosure must not be made for personal gain; and
- At least one of the following conditions at (a) to (d) must be met:

- (a) At the time the disclosure was made the worker reasonably believed that they would be penalised if they made the disclosure to the employer, a responsible person, a prescribed person or a Minister; or
- (b) Where there is no relevant prescribed person, the worker reasonably believed that it was likely that evidence would be concealed or destroyed if the worker made the disclosure to the employer or responsible; or
- (c) The worker has previously made a disclosure of substantially the same information to the employer, a responsible person, a prescribed person or a Minister; or
- (d) The wrongdoing is of an exceptionally serious nature.

Under section 10(1)(d) having regard to all of the circumstances of the case it must be reasonable for the worker in the case to make the disclosure.

The assessment of what is reasonable, under section 10(3) takes account of, among other things:-

- (a) The identity of the person to whom the disclosure is made,
- (b) The seriousness of the relevant wrongdoing,
- (c) Whether the wrongdoing is ongoing or likely to occur in the future,
- (d) Whether any action had been taken in cases where a previous disclosure was made; and
- (e) Whether the worker complied with any procedures in place when making that previous disclosure.

## **19.0 Communication, Monitoring And Review**

- 19.1 This policy will be communicated to the staff of the LSRA via e-mail and will be available in booklet form.
- 19.2 It will be subject to regular monitoring, evaluation and an annual review in consultation with the senior management team and LSRA Staff.
- 19.3 The policy will be provided to all new staff who join the LSRA.

## **20.0 Support And Advice**

- 20.1 Advice and support, is available to workers at:  
[www.workplacerelements.ie](http://www.workplacerelements.ie)
- 20.2 Further Information is available on the below noted link:  
<http://www.per.gov.ie/en/protected-disclosures-act-2014/>

## **21.0 Review**

- 21.1 A review is available in respect of:

- (a) a decision to disclose your identity (see paragraph 10.0);
- (b) the outcome of any assessment or investigation undertaken in respect of the protected disclosure; and
- (c) the outcome of any assessment or investigation in respect of any complaint of penalisation (see paragraphs 8.2-8.7).

21.2 The review will be carried out by the Chief Executive, LSRA. In order to seek a review, you should email the Chief Executive at [bjdoherty@lsra.ie](mailto:bjdoherty@lsra.ie). The email should set out the decision which is to be reviewed and the factors which you believe are relevant to the review.

21.3 The Chief Executive will carry out the review and will advise you of the outcome of the review.

## **22.0 Reporting**

22.1 Under section 22 of the 2014 Act, the LSRA is required to report annually, by June 30 in each year, on –

- the number of protected disclosures made to it;
- the action (if any) taken in response to those protected disclosures; and
- such other information relating to those protected disclosures and the action take as may be requested by the Minister from time to time.

The report will not enable the identification of the persons involved.

## **23.0 CONTACT POINTS**

23.1 Ultan Ryan is the Protected Disclosures Manager and is authorised to operate as the internal disclosure channel in accordance with Section 6(2) of the Protected Disclosures Act 2014.

23.2 The LSRA may appoint an appropriate staff member as the coordinator responsible for the maintenance and day-to-day operation of this policy.

**February 2018**

**Protected Disclosure Form LSRA PD-1**  
**[STRICTLY PRIVATE AND CONFIDENTIAL]**

**Part One: General Information**

**Name:** Click here to enter text.

**Email:** Click here to enter text.

**Phone number:** Click here to enter text.

**Please specify your preferred method of contact:** Click here to enter text.

**Part Two: Disclosure Details**

**(Please fill in all details available to you.)**

**Details of alleged wrongdoing:** Click here to enter text.

**Date of alleged wrongdoing or the date it was identified:** Click here to enter text.

**Is this alleged wrongdoing ongoing?** Click here to enter text.

**Who was/is involved in this wrongdoing?** Click here to enter text.

**Has this information been previously disclosed? (If so, to whom, by whom and what actions were taken)** Click here to enter text.

**Any other relevant information** Click here to enter text.

I, insert name, am providing this information to Insert name of immediate manager, their supervisor or the Protected Disclosure Manager. I have read the contents of the policy document and I believe this information discloses a wrongdoing.

**Signed:** Click here to enter text.

**Date:** Click here to enter text.