

Protected Disclosure Reporting in the Workplace

NCSE Guidance and Procedures

October 2017

This Guidance has been produced for information purposes only. It does not impose any legal obligations in itself, nor is it a legal interpretation of the Protected Disclosures Act 2014.

1. Introduction

The purpose of this document is to set out the NCSE's guidance for the management of Protected Disclosures in the workplace and to outline the procedures provided for reporting concerns. Making a protected disclosure refers to a situation where a worker discloses information in relation to an alleged wrongdoing in connection with the workers employment, sometimes referred to as "whistleblowing".

The Protected Disclosures Act 2014 enables workers to disclose information in relation to wrongdoing in the workplace by ensuring that safeguards exist should reprisals be taken against them.

The Protected Disclosures Act 2014 requires every public body to establish and maintain procedures for dealing with protected disclosures and to provide written information relating to these procedures to workers. This guidance document is informed by Department of Public Expenditure and Reform guidance titled "*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*" and the Department of Education and Skills document '*Guidance on Protected Disclosure Reporting in the Workplace*' (March 2016). This document should be read in conjunction with the Protected Disclosures Act 2014 to which it relates.

Overall responsibility for this guidance document rests with the Council. Day-to-day responsibility for this guidance document is delegated to the Head of Internal Audit. The Head of Corporate Governance and the Head of Human Resources also have roles in relation to the operation of this guidance as set out below.

To whom does this Guidance apply?

This guidance is applicable to all current and former workers at or on behalf of the NCSE and provides protections also for contractors, consultants, agency staff, trainees and interns as per the definition of workers in section 3 of the 2014 Act.

A volunteer may make a disclosure if they wish to do so. Such disclosures will be appropriately assessed and / or investigated. However, volunteers are not included in the definition of a "worker" and therefore are not afforded the protections under the Act.

If a barrister or solicitor subsequently discloses information which was the subject matter of a protected disclosure to him/her, he/she will not be protected by the 2014 Act. A trade union official or an official of an excepted body will however be able to avail of the protections of the 2014 Act.

2. Key principles underlying this guidance

- The NCSE is committed to creating a workplace culture that encourages the making of protected disclosures and provides protection for disclosers. An appropriate environment for addressing concerns relating to potential wrongdoing in the workplace is provided for along with the necessary support for workers who raise genuine concerns.
- A worker who has a reasonable belief¹ that the information contained in his/her disclosure shows or tends to show that wrongdoing covered by the Act has occurred, is occurring or is likely to occur, will be protected against reprisals even if the worker's concern is ultimately misguided or mistaken.
- The worker can be assured that the concern will be treated seriously and investigated where it is considered appropriate. Where an investigation takes place, the identity of the worker raising the concern will be safeguarded insofar as it is practicable. The worker raising the concern will be advised on how the issue has been addressed, and will not be disadvantaged, in any way, for having made the disclosure, even if no wrongdoing is identified, providing the concern was based on a reasonable belief.
- The NCSE will take all reasonable steps to treat disclosures made under this guidance in a confidential and sensitive manner. The NCSE will not disclose the worker's identity without their consent, unless it is required by law or necessary for the effective investigation of the relevant wrongdoing.
- The NCSE will not tolerate any penalisation² of workers who make a report of possible wrongdoing based on a reasonable belief. Any acts of penalisation or attempted penalisation will be treated as a disciplinary matter and disciplinary sanctions will be imposed against a person who carries out any act of penalisation. Workers who experience any act of penalisation should notify their line manager or Head of Human Resources in the first instance and the notification will be assessed and examined and appropriate action taken where necessary. The Act provides significant forms of redress for penalisation and other loss.

3. What type of disclosure is NOT covered by the Guidance?

The 2014 Act is intended to deal with disclosures of wrongdoing as defined in the Act and set out below. It is not intended to deal with personal employment complaints, failure to comply with a worker's contract of employment/work/services, general day-to-day operational reporting or other internal employment procedures.

¹ **"reasonable belief"** means that the belief is based on reasonable grounds. This does not mean that the belief has to be correct. A worker has the right to be wrong in their reasonable belief. The test applied to "reasonable belief" will be an objective test i.e. the disclosure will be assessed based on how a reasonable person would respond to the information available to him or her at the time that the disclosure was made.

² **"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;

Personal employment complaints should generally be dealt with under the internal grievance or dignity at work procedures. For example, a worker may complain that there is a breach of the worker's own terms and conditions. That type of complaint should generally be dealt with under the grievance procedure. Alternatively, a worker may claim that they are being bullied or harassed by a colleague. That type of complaint should generally be dealt with under the dignity at work procedure.

Accordingly, this guidance document should also be read in conjunction with the following procedures to ensure that the issue being reported on does not fall within an existing code of practice or that it should be dealt with under another process:

- Grievance procedure
- Civil Service Disciplinary Code
- Civil Service Code of Standards and Behaviour
- Dignity at Work and anti-bullying, harassment and sexual harassment policy
- Ethics in Public Office Acts

In addition, it should be noted that this Guidance does not cover the following:

- Disclosures of wrongdoing if the matter is one which is the function of the worker to detect, investigate or prosecute.
- A disclosure of information obtained by unlawful or improper means, e.g. unlawful or improper access to computer systems or databases.
- Existing mandatory reporting schemes.
- A disclosure where the worker knowingly conveys false, misleading, frivolous or vexatious information. If it transpires that a worker makes a disclosure, which they know to be false or do not believe to be true, the NCSE will take disciplinary or other appropriate action.

4. What type of protected disclosure is covered by the Guidance?

A disclosure of relevant information made by a worker in the reasonable belief that one or more of the following types of wrongdoing has occurred, is occurring or is likely to occur, is covered by Section 5 (3) in the Act and includes:

- An offence has been, is being or is likely to be committed.
- A person has failed, is failing or is likely to fail 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.
- A miscarriage of justice has occurred, is occurring or is likely to occur.
- The health or safety of any individual has been, is being or is likely to be endangered.
- The environment has been, is being or is likely to be damaged.
- 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.
- An act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement.
- Information tending to show any matter falling within any of the preceding wrongdoings has been, is being or is likely to be concealed or destroyed.

The motivation of the worker for making a protected disclosure is irrelevant when determining whether or not it is a disclosure protected by the 2014 Act. All disclosures will be dealt with regardless of the worker's motivation for making the disclosure, and the worker will be protected so long as the worker reasonably believes that the information disclosed tended to show a wrongdoing.

Reasonable belief

A worker 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 has to be correct. Workers are entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.

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 may not know all the facts of the case and is not obliged to find proof of his / her suspicion. 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.

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.

Workers should be informed in the Procedures that they are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. All workers need to do, and should do, is disclose the information that they have, based on a reasonable belief that it discloses a wrongdoing and, where the information relates to individuals, that it is necessary to disclose that information.

However, a disclosure made in the absence of a reasonable belief will not attract the protection of the 2014 Act and, may result in disciplinary action against the discloser. In addition, disclosure of a wrongdoing does not necessarily confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing.

5. Making a protected disclosure internally within the NCSE

A worker should make a disclosure at the earliest possible time if in their reasonable belief, any of the wrongdoings outlined above has occurred, is occurring or is likely to occur or there has been a breach of Civil Service policy such that harm may be arising to the public or to the NCSE. A worker should not delay making a protected disclosure in order to investigate their suspicion and gather evidence to support it. This information must:

- have come to the worker’s attention in connection with the worker’s employment; and
- the worker must have a reasonable belief that the information disclosed shows a relevant wrongdoing.

A worker should disclose the relevant information as soon as possible to their line manager first if appropriate (known as the ‘Recipient’).

If he/she is unable or unwilling to disclose through their line management, they may raise the matter with the next most senior responsible manager as appropriate or make a disclosure to the Head of Internal Audit. In this instance, the Head of Internal Audit will provide information on the disclosure to the Review Group who will assign an official/other to act as the Recipient (see details of the Review Group’s role below).

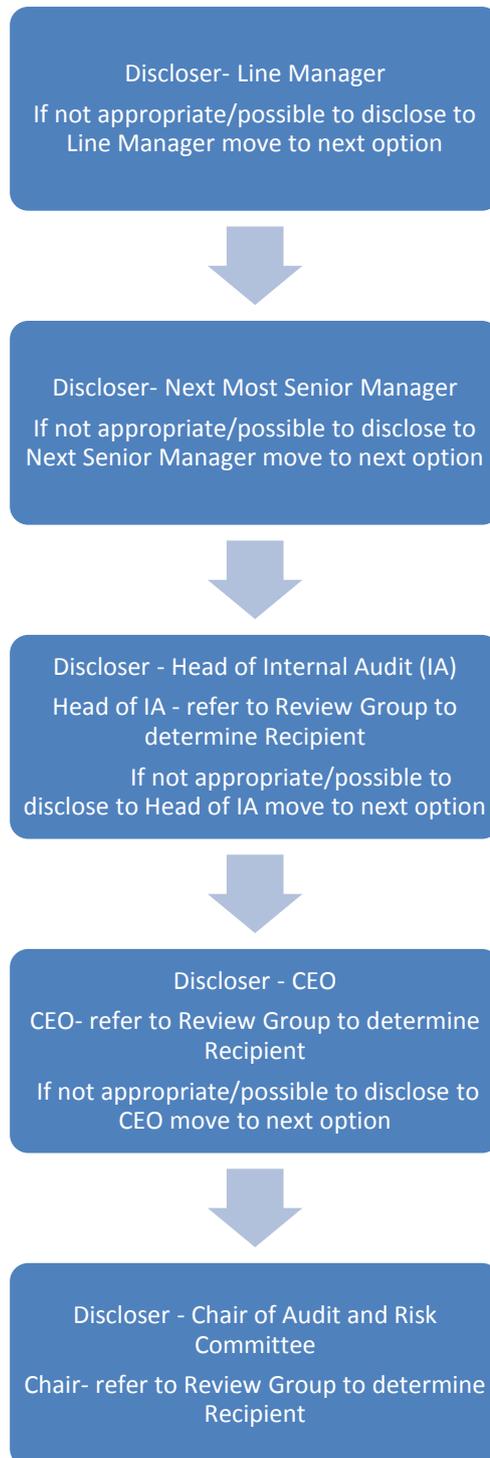
If he/she is unable or unwilling to disclose through the options above, the matter should be raised with the CEO. Should the matter relate to the CEO, the matter should be raised with the Chairperson of the Audit and Risk Committee³. In such instances, the CEO or the Chairperson of the Audit and Risk Committee will consider the matter raised and may consult with the Council Chairperson and/or

³ The Chairperson of the Audit and Risk Committee is John Fitzgerald. A Discloser may address their letter confidentially to him, C/O Internal Audit NCSE, 1-2 Mill Street, Trim, Co. Meath.

Committee members. The Committee Chairperson or CEO will also provide information on the disclosure to the Review Group who will assign an official/other to act as the Recipient.

In all cases, the Head of Internal Audit will be notified of all protected disclosures, the contents of the disclosure, and the outcome of any screening/investigation or review. In addition, the CEO will be notified of the commencement of an investigation and of the outcome.

Steps in making a disclosure internally



Following the disclosure, an initial screening process is undertaken to determine whether or not it should be treated as a protected disclosure and the nature and type of investigation that may follow. Full details on these processes are set out in Appendix 1.

Role of the Review Group

The Act provides for the establishment of a Review Group. The Review Group will comprise the Head of Corporate Governance and another senior manager in the NCSE and a senior legal representative as required. Any review should be undertaken by a person who has not been involved in the initial assessment, investigation or decision relating to a protected disclosure. Where this may have involved the Head of Corporate Governance or other senior manager, an alternative person will be appointed to the Review Group. The Review Group shall:

- Assign an alternative official/other to investigate the disclosure if appropriate.
- Review, on request, a screening decision not to proceed with a disclosure to investigation.
- Examine on request, the investigation process in the event that the Discloser is not satisfied with the decision of the investigation.
- Review on request, the outcome of any assessment or investigation in respect of a complaint of penalisation.
- Review a decision to disclose the identity of a discloser (except in exceptional circumstances).
- Note recommendations of report findings (if any), agree a timeframe for the implementation of same and to nominate an official to carry out the implementation.

The review process does not provide an entitlement to two reviews in respect of the same issue.

Role of the Head of Internal Audit

- Maintain records of all disclosures.
- Notify the CEO on receipt of disclosures which are the subject of an investigation and on the outcome including report recommendations (if any).
- Report to the CEO and the Audit and Risk Committee, details of all disclosures brought to his/her attention and their findings.
- Monitor the implementation of the recommendations that have been formulated as a consequence of a report.
- Liaise with the Review Group to arrange for the nomination of a Recipient as required.
- Monitor the operation and management of protected disclosures procedures and report to Audit and Risk Committee.
- Provide a summary report on all protected disclosures which will be included in the NCSE's Annual Report as required under Section 22 of the Protected Disclosures Act 2014.

Role of Corporate Governance

- Lead and support the work of the Review Group as outlined above.
- Conduct periodic reviews, at least annually, and evaluate the protected disclosures procedures, where appropriate, and report to senior management and the Council.

Role of Head of Human Resources

- Investigate any instances of penalisation reported by a worker.
- Decide on the disciplinary action required where it is established that a worker knowingly made a false, misleading, frivolous or vexatious disclosure.
- Provide information on investigation procedures.

6. Making a protected disclosure outside of the NCSE

The Act allows workers to make a protected disclosure to persons other than their employer in certain circumstances. There are five possible avenues of disclosure (full details as per the Act are provided in Appendix 2).

(a) Employer or 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 Act 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 the Act. There is an additional requirement in this case- the worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

(c) A Minister of the Government

A 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 for Education and Skills is the Minister with primary statutory functions in relation to NCSE business.

(d) A legal adviser

A protected disclosure can 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)

If it is not appropriate to disclose to the employer or one of the options at (a) to (d) above, the discloser may use an alternative external third party. There are stringent requirements for alternative external disclosures to qualify as protected disclosures under the Act, which are outlined in the Appendix 2 (section 10).

7. 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 are provided or if 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 and investigating the matter in the absence of the knowledge and identity of the discloser.

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), may be difficult or impossible to apply unless the worker's anonymity lifts. In addition, it should be noted that a worker cannot obtain redress under the 2014 Act without identifying themselves.

8. Confidentiality/protection of identity.

The 2014 Act provides that a Recipient must not disclose to another person any information that might identify the discloser. The discloser's identity must be protected at all times. However, there are exceptions where:

- The Recipient shows that he/she took all reasonable steps to avoid such disclosure.
- The Recipient has a reasonable belief that the discloser did not object to their identity being disclosed.
- The Recipient had a reasonable belief that it was necessary:
 - for the investigation of the wrongdoing concerned,
 - to prevent serious risk to the security of the State, public health, public safety or the environment, or
 - for the prevention of crime or prosecution of a criminal offence; or
- That the disclosure is otherwise necessary in the public interest or is required by law.

Where a decision is taken that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser will be consulted. Where possible, the recipient will gain the informed consent of the discloser, prior to any action being taken that could identify them. In any event, the discloser will be informed of any decision to disclose in advance, except in exceptional cases. The discloser may seek a review of this decision by the Review Group.

If a worker is concerned that their identity is not being protected, they should notify their employer and the matter will be investigated and appropriate action taken where necessary.

Records of protected disclosures raised, including the outcome, should be maintained for the minimum required document retention period after the closure of the case by the Head of Internal Audit. These records should be maintained in a confidential and secure form that does not endanger the confidentiality of the person making the disclosure or damage reputations.

As it is not possible to know at the time of disclosure whether the disclosure will subsequently be deemed protected under the 2014 Act, written records, including timelines, in relation to any assessment and/or investigation undertaken should be maintained and treated in the same confidential manner.

9. What Protections are offered to those who make protected disclosures?

The Act sets out protections and prohibits penalisation of workers who make a protected disclosure. A worker could be awarded compensation of up to five years remuneration if unfairly dismissed. However, a worker who knowingly makes a false or misleading disclosure will not receive protections under the Protected Disclosures Act 2014.

The NCSE will protect workers who raise concerns against penalisation by investigating all claims of such penalisation and taking appropriate action against those who perpetrate them. The NCSE will investigate and take appropriate disciplinary action against any worker:

- Who penalises or seeks to penalise a worker who has made what is being treated as a protected disclosure.
- Who is found to be unnecessarily or inappropriately endeavouring to identify a worker who makes a disclosure under the legislation.
- Who, except in circumstances permitted by section 16(2) of the Protected Disclosures Act 2014, discloses details that could establish the identity of a worker who has made what is being treated as a protected disclosure.

Workers can be assured that all reasonable steps will be taken to protect them from penalisation for having made a protected disclosure and any worker having made a report of wrongdoing that experiences any act of penalisation should inform the Head of Human Resources. Incidents of reprisal against a worker making a report under this guidance may be subject to action under the Civil Service Disciplinary Code.

A worker who is considering making a protected disclosure should be aware that making a protected disclosure does not entitle them to protection from the consequences of their own wrongdoing.

10. Protection of the person against whom an allegation of wrongdoing has been made (i.e. the Respondent).

Where an allegation is made against an individual (the “Respondent”), the general principals of natural justice and fair procedures will be complied with as appropriate. This may include a right to challenge the evidence against him/her.

While an investigation is on-going, all reasonable steps should be taken to protect the confidentiality of those who are the subject of allegations in a protected disclosure pending the outcome of the investigation. Where it is necessary to interview the respondent during the course of the investigation, he/she should be advised that they are entitled to be accompanied by a colleague or staff representative etc, should they so wish.

The Respondent should be included in the investigation process and made aware of the details of any allegation against him/her in so far as is possible having regard to the requirements of confidentiality contained in the Act and will be given the opportunity, as part of a full investigation, to put forward their case in response to the allegation(s).

11. Monitoring and communication

The protected disclosures procedures will be reviewed annually and evaluated where appropriate. The outcome will be reported to the senior management team and the Council.

All staff members will be given a copy of this policy and will be required to certify that they have read and noted the contents of the policy. The policy will be given to new recruits and included in induction programmes.

The Protected Disclosures Act 2014 can be downloaded at:

<http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/html>

Protected Disclosure Reporting in the Workplace

Draft Appendices

Appendix 1 How to make a disclosure

1. How to make a disclosure

A worker should make a disclosure at the earliest possible time if in their reasonable belief, any of the wrongdoings⁴ as per the Act has occurred, is occurring or is likely to occur or there has been a breach of Civil Service policy such that harm may be arising to the public or to the NCSE. A worker should not delay making a protected disclosure in order to investigate their suspicion and gather evidence to support it. This information must:

- have come to the worker's attention in connection with the worker's employment; and
- the worker must have a reasonable belief that the information disclosed shows a relevant wrongdoing.

A worker should disclose the relevant information as soon as possible to their line manager first if appropriate (known as the 'Recipient').

If he/she is unable or unwilling to disclose through their line management, they may raise the matter with the next most senior responsible manager as appropriate or make a disclosure to the Head of Internal Audit. In this instance, the Head of Internal Audit will provide information on the disclosure to the Review Group who will assign an official/other to act as the Recipient.

If he/she is unable or unwilling to disclose through the options above, the matter should be raised with the CEO. Should the matter relate to the CEO, the matter should be raised with the Chairperson of the Audit and Risk Committee. In such instances, the CEO or the Chairperson of the Audit and Risk Committee⁵ will consider the matter raised and may consult with the Council Chairperson and/or Committee members. The Committee Chairperson or CEO will also provide information on the disclosure to the Review Group who will assign an official/other to act as the Recipient.

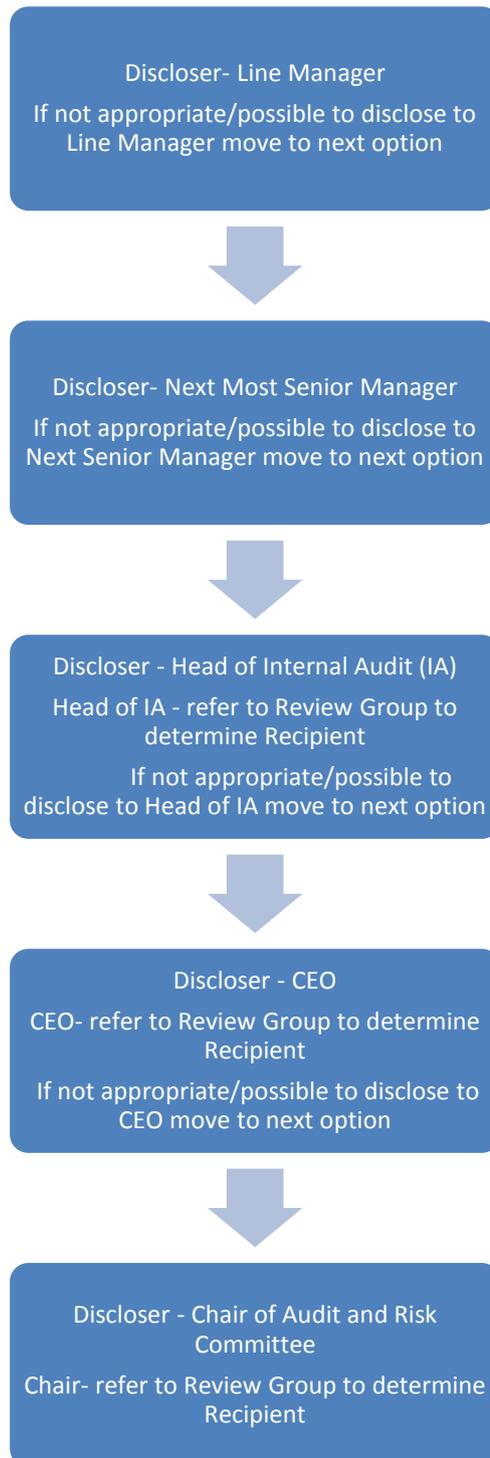
In all cases, the Head of Internal Audit will be notified of all protected disclosures, the contents of the disclosure, and the outcome of any screening/investigation or review. In addition, the CEO will be notified of the commencement of an investigation and of the outcome.

⁴ A wrongdoing that has occurred, is occurring or is likely to occur and includes:

- An offence.
- A failure to comply with any legal obligation.
- A miscarriage of justice.
- The endangerment of the health or safety of an individual.
- Environmental damage.
- An unlawful or improper use of funds or resources of a public body or public money.
- An act or omission that is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement.
- The concealment or destruction of information tending to show any matter falling within the above wrongdoings.

⁵ The Chairperson of the Audit and Risk Committee is John Fitzgerald. A Discloser may address their letter confidentially to him, C/O Internal Audit NCSE, 1-2 Mill Street, Trim, Co. Meath.

Steps in making a disclosure internally



2. What should a disclosure include?

A disclosure under this guidance should preferably be made in writing to ensure that all the relevant information is made available at the time the disclosure is made. A protected disclosures notification form is included below - **Protected Disclosures Notification Form**. The information contained in the disclosure should be clear and factual, where possible, and avoid speculation, personal attacks and emotive language. It should include:

- A declaration that the disclosure is being made under the procedures set out in the Act and state if you do / do not expect confidentiality.
- The discloser's name, position/role, place of work, date of disclosure and your preferred contact details.
- Supporting evidence where it is available and should include:
 - the name of the person(s) (if known or applicable) allegedly involved in the alleged wrongdoing;
 - the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
 - whether or not the alleged wrongdoing is still ongoing;
 - whether the alleged wrongdoing has already been disclosed to any member of management or other person and if so, to whom, when, and what action was taken;
 - the details of the alleged wrongdoing (what is occurring / has occurred and how) and any supporting information; and
 - where possible, identify any witnesses to the disclosed conduct.
- Any other relevant information.

Note: The Act and the Guidance recognise that it may not always be possible to completely protect the identity of the Discloser. The Recipient does however have a responsibility to safeguard your identity insofar as is practically and pragmatically possible.

While it is preferable to make a disclosure in writing, there is no required format. A disclosure can be made:

- anonymously [**Note:** Anonymous disclosures will be acted upon to the extent that this is possible given the constraints in obtaining further information on the alleged wrongdoing.]
- electronically, verbally or in writing [**Note:** When a disclosure is made verbally, it will be documented by the Recipient and agreed by the Discloser.]

Protected Disclosures Notification Form

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 Protected Disclosure legislation.

Please note that protected disclosures must be made in good faith and relate to a matter that you have reasonable grounds to be concerned about. It must not be 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.

The information contained in this form should be clear and factual, where possible, and avoid speculation, personal attacks and emotive language.

1. I, _____ (name of worker making the protected disclosure) wish to make a disclosure under the Protection Disclosures Act 2014.

2. I expect confidentiality

I do not expect confidentiality

(please tick as appropriate)

3. Position/Role _____

4. Grade _____

5. Place or Area/Region of work _____

6. Category of Wrongdoing (please tick as appropriate)

- An offence has been, is being or is likely to be committed.
- A person has failed, is failing or is likely to fail 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.
- A miscarriage of justice has occurred, is occurring or is likely to occur
- The health or safety of any individual has been, is being or is likely to be endangered
- The environment has been, is being or is likely to be damaged.
- 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.
- An act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement.
- Information tending to show any matter falling within any of the above wrongdoings has been, is being or is likely to be concealed or destroyed.

7. Date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified.

8. Is the alleged wrongdoing still ongoing? _____

9. Has this alleged wrongdoing already been disclosed to any member of management or other person, if so, to whom, when and what action was taken.

10. Details of the protected disclosure including the name of the person(s) (if known or applicable) allegedly involved in the alleged wrong doing, (*care should be taken to only include the name(s) of individual(s) directly relevant to the report*), what is occurring/has occurred and how.

11. If there are witnesses to the disclosed conduct, please identify the witness details if possible

12. Please provide any other relevant information

Please provide contact details⁶ at which the Recipient can contact you:

Address _____

Tel no. _____

Email _____

Worker's signature _____

Date _____

⁶ Anonymous disclosures will be acted upon to the extent that this is possible given the constraints in obtaining further information on the alleged wrongdoing.

3. Screening Process

When a disclosure of alleged wrongdoing is made, an initial screening process is undertaken. The screening process will involve an assessment of the disclosure to seek to determine whether or not it should be treated as a protected disclosure. If it is unclear whether the disclosure qualifies as a protected disclosure, the recipient should treat the disclosure as a protected disclosure (and protect the identity of the discloser) until satisfied that the information is not a protected disclosure and keep a written record of his/her actions, including timelines in a secure and confidential manner.

It may be necessary to differentiate between protected disclosures and personal employment complaints. In some cases the information provided may involve both a personal employment complaint and a protected disclosure. The disclosure should be assessed to determine the nature of the information disclosed and the procedure(s) that is / are most appropriate to be used to investigate the matter.

The assessment should consider whether the alleged wrongdoing is serious or minor and whether it is something that can be investigated or not. If it can be investigated, the nature and extent of the investigation should be determined and the steps to be taken as part of such an investigation. This could consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoings, or an external investigation by another body.

It is important to note that some matters may be of such seriousness that the investigation will more appropriately be carried out externally or by professional experts in a particular area. In some cases the matter may need to be reported to, and investigated by, An Garda Síochána or another body with the statutory power and function of investigation of particular matters.

The discloser will be provided with feedback in relation to the matters disclosed and be advised when consideration of the disclosure is complete, except in exceptional cases. This will usually be within 10 working days⁷. Information and feedback will be provided in confidence. However, the Recipient is not obliged to inform you of the progress, or outcome, of any disciplinary process involving another worker. In general, such information is confidential between the employer and the worker disciplined.

A worker who has made a disclosure of wrongdoing and requires additional support or advice may wish to contact the Civil Service Employee Assistance Service (CSEAS).

4. Decision not to proceed to investigation

You will be advised by the Recipient of the basis for this decision. If you are dissatisfied with a decision of the Recipient not to pursue the matter further, you may request a review of the initial screening decision by the Review Group (via the Recipient) within 10 working days of having received the decision.

A review of the initial screening decision will be undertaken by the Review Group who will notify the Head of Internal Audit of the review request and the outcome of that review.

You will be advised generally within 10 to 15 working days⁸ by the Recipient of the outcome of the review which will be either (a) or (b) below.

(a) Agreeing with the decision of the Recipient not to proceed to investigation.

⁷ Timeframes are not mandatory and are dependent on the content and complexity of the disclosure.

⁸ Timeframes are not mandatory and are dependent on the content and complexity of the disclosure.

(b) Disagreeing with the decision of the Recipient and, either referring the disclosure back to the Recipient to carry out an investigation or, if appropriate, nominate a new investigating officer.

A decision of the Review Group not to pursue the matter will represent a final internal decision on the matter.

5. Decision to proceed to investigation

The initiation of an investigation must be reported to the Head of Internal Audit and the Review Group. The Head of Internal Audit will inform the CEO of a decision to investigate.

The Discloser will be advised by the Recipient of the basis for his/her decision in respect of the screening and will be advised of his/her role in the investigation. The Discloser will be updated on the progress and outcome of the investigation as appropriate having regard to the nature of the matters investigated. It is not possible to lay down precise timescales or steps required for investigations, as this will depend on the nature of the issues raised. However, the Recipient will advise of progress and the investigation will be brought to a conclusion as speedily as possible.

The Discloser, the Head of Internal Audit Unit and the Review Group will be advised of the outcome of the investigation.

In the event that the Discloser is dissatisfied with the decision following the investigation, it is open to them to request the Recipient to have the investigation process examined by the Review Group within 10 working days of having received that decision. Please note that this will **not** be a re-investigation of the disclosure but an examination of the investigation process. The outcome of this investigation will represent a final internal decision on the matter.

A review of the investigation decision will be undertaken by the Review Group who will notify the Head of Internal Audit of the review request and the outcome of that review. You will be advised generally within 10 to 15 working days⁹ by the Recipient of the outcome of the review. A decision of the Review Group not to pursue the matter will represent a final internal decision on the matter.

Where you have arrived at a conclusion that the Discloser was not fully aware of all the facts or was genuinely mistaken in their belief of the occurrence or likely occurrence of wrongdoing it is especially important to explain the basis of your finding to the Discloser.

In a case where you have arrived at a conclusion that the Discloser did not make his/her disclosure based on a reasonable belief – in other words the disclosure was made for frivolous or vexatious reasons, you should advise the Review Group who may consult with the Head of Human Resources to consider whether disciplinary proceedings ought to be pursued against the person concerned.

Outcome of the investigation

The report of findings should be sent to the Review Group containing the following information:

- A description of the disclosure and the findings of the investigation.
- The effect the disclosure had on the NCSE, if any.
- The means of perpetrating the malpractice or impropriety and if appropriate, recommendation of necessary measures to prevent a recurrence.
- An action plan to implement these recommendations.

⁹ Timeframes are not mandatory and are dependent on the content and complexity of the disclosure.

- The action required to strengthen future responses under this guidance.
- A conclusion as to the way forward.
- Any other relevant material.

The Recipient in consultation with the Review Group will agree the final report.

The Review Group will consider the appropriate means by which the report's findings/recommendations are to be implemented. The report including the implementation plan (if any) will be sent to the Head of the Internal Audit Unit who will monitor implementation as appropriate. The Head of Internal Audit Unit will forward a copy of the final report including an implementation plan, if any, to the CEO.

Appendix 2 Making a Protected Disclosure outside of the employer

See Section 6 – 10 – Protected Disclosures Act 2014

Disclosure to employer or other responsible person

6. (1) A disclosure is made in the manner specified in this section if the worker makes it—

- (a) to the worker's employer, or
- (b) where the worker reasonably believes that the relevant wrongdoing which the disclosure tends to show relates solely or mainly—
 - (i) to the conduct of a person other than the worker's employer, or
 - (ii) to something for which a person other than the worker's employer has legal responsibility,to that other person.

(2) A worker who, in accordance with a procedure the use of which by the worker is authorised by the worker's employer, makes a disclosure to a person other than the employer is to be treated for the purposes of this Act as making the disclosure to the employer.

Disclosure to prescribed person

7. (1) A disclosure is made in the manner specified in this section if the worker—

- (a) makes the disclosure to a person prescribed under *subsection (2) (a)*, and
- (b) reasonably believes—
 - (i) that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under *subsection (2) (b)*, and
 - (ii) that the information disclosed, and any allegation contained in it, are substantially true.

(2) The Minister may by order—

- (a) prescribe such persons as, by reason of the nature of their responsibilities or functions, appear appropriate to be recipients of disclosures of relevant wrongdoings falling within the description of matters in respect of which they are prescribed, and
- (b) prescribe in respect of each prescribed person such description of matters as appears appropriate by reason of the nature of the responsibilities or functions of the person.

(3) Every order under *subsection (2)* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done under the order.

Disclosure to Minister

8. A disclosure is made in the manner specified in this section if—

- (a) the worker is or was employed in a public body, and
- (b) the disclosure is made to a Minister of the Government on whom any function relating to the public body is conferred or imposed by or under any enactment

Disclosure to legal adviser

9. A disclosure is made in the manner specified in this section if it is made by the worker in the course of obtaining legal advice (including advice relating to the operation of this Act) from a barrister, solicitor, trade union official or official of an excepted body (within the meaning of section 6 of the Trade Union Act 1941).

Disclosure in other cases

10. (1) A disclosure is made in the manner specified in this section if it is made otherwise than in the manner specified in *sections 6 to 9* and

- (a) the worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
- (b) the disclosure is not made for personal gain,
- (c) any one or more of the conditions in *subsection (2)* is met, and
- (d) in all the circumstances of the case, it is reasonable for the worker to make the disclosure.

(2) The conditions referred to in *subsection (1)(c)* are

- (a) that, at the time the worker makes the disclosure, the worker reasonably believes that the worker will be subjected to penalisation by the worker's employer if the worker makes a disclosure in the manner specified in *section 6, 7 or 8*,
- (b) that, in a case where no relevant person is prescribed for the purposes of *section 7* in relation to the relevant wrongdoing, the worker reasonably believes that it is likely that evidence relating to the relevant wrongdoing will be concealed or destroyed if the worker makes a disclosure in the manner specified in *section 6*,
- (c) that the worker has previously made a disclosure of substantially the same Information-
 - (i) in the manner specified in *section 6*, or
 - (ii) in the manner specified in *section 7 or 8*, and
- (d) that the relevant wrongdoing is of an exceptionally serious nature.

(3) In determining for the purposes of *subsection (1)(d)* whether it is reasonable for the worker to make the disclosure regard shall be had, in particular, to-

- (a) the identity of the person to whom the disclosure is made,
- (b) in a case falling within *subsection (2) (a), (b) or (c)*, the seriousness of the relevant Wrongdoing,
- (c) in a case falling within *subsection (2)(a), (b) or (c)*, whether the relevant wrongdoing is continuing or is likely to occur in the future,
- (d) in a case falling within *subsection (2)(c)*, 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, and
- (e) in a case falling within *subsection (2)(c)(i)*, whether in making the disclosure to the employer the worker complied with any procedure the use of which by the worker was authorised by the employer.

(4) For the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in *subsection (2)(c)* even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.

5) In *subsection (1)(b)* “personal gain” excludes any reward payable under or by virtue of any enactment.