



An Rialálaí
Carthanas

Charities
Regulator

Policy Title:

**Guidance for persons who
wish to make a
Protected Disclosure to
the Charities Regulator**

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Revision No.	000
Date	24 June 2021

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1. Background - Who we are and what we do

The Charities Regulator was established as an independent Authority on a statutory basis in October 2014 in accordance with the Charities Act 2009. The Charities Regulator is responsible for the registration and regulation of all charitable organisations ('charities') that carry out activities in the Republic of Ireland.

Our Functions:

- Increase public trust and confidence in the management and administration of charitable trusts and charitable organisations.
- Promote compliance by charity trustees with their duties in the control and management of charitable trusts and charitable organisations.
- Promote the effective use of the property of charitable trusts or charitable organisations.
- Ensure the accountability of charitable organisations to donors and beneficiaries of charitable gifts, and the public.
- Promote understanding of the requirement that charitable purposes confer a public benefit.
- Establish and maintain a register of charitable organisations.
- Ensure and monitor compliance by charitable organisations with the Charities Act 2009.
- Carry out investigations in accordance with the Charities Act 2009.
- Encourage and facilitate the better administration and management of charitable organisations by the provision of information or advice, including in particular by way of issuing (or, as it considers appropriate, approving) guidelines, codes of conduct, and model constitutional documents.
- Carry on such activities or publish such information (including statistical information) concerning charitable organisations and charitable trusts as it considers appropriate.
- Provide information (including statistical information) or advice, or make proposals, to the Minister on matters relating to the functions of the Regulator.

2. Policy Statement

The Protected Disclosures Act 2014 provides a statutory framework within which workers can raise concerns regarding relevant wrongdoing that has come to their attention in the course of their work in the knowledge that they can avail of significant employment and other protections if they are penalised by their employer or suffer any detriment for making a protected disclosure.

This policy sets out the procedures the Charities Regulator has put in place to facilitate workers to make a protected disclosure to the Charities Regulator under Section 7 of the Protected Disclosures Act 2014.

3. Scope

Under Statutory Instrument No.367 of 2020, the Chief Executive of the Charities Regulator has been specified as a 'prescribed person' for the purpose of receiving disclosures of relevant wrongdoings in respect of all matters relating to the regulation of charities pursuant to the Charities Act 2009.

The primary responsibility of the Chief Executive of the Charities Regulator as a prescribed person under the Protected Disclosures Act 2014 is to protect the identity of the discloser to the greatest extent possible and to examine the information provided in the disclosure in accordance with its normal procedures for discharging its statutory functions.

4. Purpose

The purpose of this policy is to provide guidance to workers in charities on the procedures to be followed when making a protected disclosure to the Charities Regulator. This guide is for information purposes only and does not constitute legal advice and should not be relied on as such.

5. Application

Overall responsibility for these procedures rests with the Chief Executive of the Charities Regulator. Day to day responsibility for the operation of the procedures is delegated to the Compliance and Enforcement Unit.

These procedures apply to all workers in charities as defined in section 3 of the Protected Disclosures Act 2014, which includes:

- (a) Current employees whether permanent or temporary;
- (b) Former employees, retired employees or ex-employees;
- (b) Independent contractors and consultants;
- (c) Trainees; and
- (d) Agency staff.

The Protected Disclosures Act 2014 only applies to workers and does not cover volunteers or the general public. Disclosures by volunteers or the general public will be treated by the Charities Regulator as concerns, and will be dealt with in line with our Concerns Policy which is available online¹.

6. What is a 'Protected Disclosure'?

A protected disclosure is defined as a disclosure of relevant 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 connection with the worker's employment and is disclosed in the manner prescribed in the Protected Disclosures Act 2014. Generally speaking, the Act encourages a worker to make a first report of relevant information to their employer.

A worker in a charity making a protected disclosure to the Charities Regulator must also have a reasonable belief that:

1. The information they disclose falls within the remit of the Charities Regulator, and
2. The information (and any allegation contained within it) is substantially true.

¹ Available at: www.charitiesregulator.ie

Explanation of Key Terms:

Relevant Information: means factual information that comes to a workers attention in connection with their employment and which the worker reasonably believes tends to show one or more relevant wrongdoings. This is different to simply making an allegation on the basis of a suspicion that is not founded on anything tangible.

Reasonable Belief: involves both a belief in fact and reasonable grounds supporting that belief. It may involve an interplay of objective facts and circumstances, opinion and judgment but does not include idle speculation or drawing on improbable circumstances or conclusions.

You must have a reasonable belief that the information disclosed shows, or tends to show, wrongdoing. The term 'reasonable belief' does not mean that the belief has to be correct. You may have reasonable grounds for believing that some form of wrongdoing is occurring based on your observations but it may subsequently turn out that you were mistaken. A disclosure made in the absence of reasonable belief will not attract the protections of the Protected Disclosures Act 2014.

Relevant Wrongdoing: in respect of protected disclosures to the Charities Regulator from workers in charities, refers to wrongdoing in charities. Section 5(3) of the Protected Disclosures Act 2014 sets out relevant wrongdoings as follows:

- (a) The commission of an offence;
- (b) The failure of a person to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services;
- (c) A miscarriage of justice;
- (d) A danger to the health and safety of any individual;
- (e) Damage to the environment;
- (f) An unlawful or otherwise improper use of funds or resources of a public body, or of other public money;

- (g) An act or omission by or on behalf of a public body that is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement; or
- (h) Information tending to show any matter falling within any of the preceding paragraphs (a) to (g) has been, is being, or is likely to be concealed or destroyed.

7. Anonymous Disclosures

Anonymous disclosures are not excluded from the protection of the Protected Disclosures Act 2014 and the Charities Regulator acts upon anonymous disclosures to the extent that this is possible. If you choose to make a protected disclosure anonymously to us, our ability to investigate may be constrained because we cannot follow-up with you for further information.

More importantly, the protections available to you under the Protected Disclosures Act 2014 such as protecting you from penalisation and other elements of the protected disclosures procedures (e.g. keeping you informed of progress and outcomes) may be difficult or impossible to apply in the case of anonymous disclosures.

Furthermore as a worker you will not be able to obtain redress under the Protected Disclosures Act 2014 without identifying yourself.

8. Obtaining Advice

The Charities Regulator cannot offer any legal advice.

The Department of Public Expenditure and Reform (DPER) has provided financial assistance to Transparency International Ireland to operate a 'Speak Up' helpline. You can call the helpline for free, confidential and expert advice at 1800 844 866 or download the free guide 'Speak Up Safely' from their website². If you are considering making a protected disclosure, we recommend that you seek advice before making a disclosure, whether from a legal adviser or trade union representative or both.

² Speak Up Safely' Website – available at: <https://transparency.ie>

9. Protections for Employees

Protection of Identity

There is a legal obligation on the recipient of a protected disclosure and any person to whom a protected disclosure is referred, to keep the discloser's identity confidential. The Charities Regulator will take all reasonable steps to treat protected disclosures made in accordance with these procedures in a confidential and sensitive manner.

The Protected Disclosures Act 2014 provides that a disclosure recipient (which in this context includes any person to whom a disclosure is referred in the performance of their duties) must not disclose to another person any information that might identify the discloser, except where:

- (a) the disclosure recipient shows that he or she took all reasonable steps to avoid disclosing the identity of the discloser,
- (b) the disclosure recipient reasonably believes that the discloser does not object to the revelation of identity,
- (c) the disclosure recipient reasonably believes that disclosing any 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, public safety or the environment, or
 - (iii) the prevention of crime or prosecution of a criminal offence, or
 - (iv) the disclosure is otherwise necessary in the public interest or is required by law.

Where it is decided that it is necessary to release information that may or will disclose the identity of the discloser, the discloser will be informed of this decision in advance of the release, except in exceptional cases.

Protection from Penalisation

The Protected Disclosures Act 2014 provides specific remedies for workers who are penalised for making a protected disclosure. Penalisation means any act or omission that affects a worker to the worker's detriment and includes suspension, lay-off, dismissal, demotion, loss of opportunity for promotion, transfer of duties, change of location of place of work, reduction in wages, change in working hours, the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty), unfair treatment, coercion, intimidation, harassment, discrimination, disadvantage, injury, damage, loss or threat of reprisal.

Penalisation can also include a detriment suffered by an individual because that individual, or a third party, has made a protected disclosure. A detriment in this context includes coercion, intimidation, harassment, discrimination, disadvantage, adverse treatment in relation to employment (or prospective employment), injury, damage, loss or threat of reprisal.

In broad terms, persons making a protected disclosure to the Charities Regulator may be entitled to remedies or defences under the Protected Disclosures Act 2014 in the event that they suffer unfair discrimination by their employer.

If you experience penalisation you may need to seek redress through internal processes within your place of employment, or external processes such as the Workplace Relations Commission. The Charities Regulator does not have a role in assisting individuals who have been penalised as a result of making a protected disclosure, and strongly advises you to obtain expert advice in this regard.

10. How to make a Protected Disclosure

The Charities Regulator recommends that at a minimum a protected disclosure should include the following details:

- (a) state that the disclosure is being made under the Protected Disclosures Act 2014;
- (b) the discloser's name, position in the organisation, place of work and confidential contact details;
- (c) the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- (d) whether or not the alleged wrongdoing is believed to be still ongoing;
- (e) whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
- (f) factual information in respect of the specific nature of the alleged wrongdoing; what is occurring/has occurred and how, together with any supporting information or data; and
- (g) any other relevant information.

A protected disclosure may be submitted to:

Email: protecteddisclosures@charitiesregulator.ie

or, by post to:

Protected Disclosures
The Charities Regulator
3 George's Dock
IFSC
Dublin 1
D01X5X

or, by phone to:

(01) 633 1550

In the interests of clarity and to avoid misinterpretation or misunderstanding it is preferable that a protected disclosure be made in writing.

A protected disclosure may be made verbally, in which case the Charities Regulator will where possible confirm the details of the disclosure, in writing, to the discloser without undue delay.

Where the discloser's identity and contact details are made known to us, we will acknowledge receipt within 7 working days.

11. What Happens After a Protected Disclosure Has Been Made?

The content of a protected disclosure is treated in the same manner as any concern raised with the Charities Regulator. The general principles of natural justice and fair procedures apply to any charity or person that is subject to investigation. The Charities Regulator will take great care in providing information to the person who has made a protected disclosure to ensure that it does not breach the legal rights of any charity that has been accused of wrongdoing.

Initial Assessment

When a disclosure of alleged wrongdoing is received, an initial screening process, involving a risk assessment, will be undertaken without delay to establish if it is a matter within the statutory remit of the Charities Regulatory and the appropriate course of action. The Chief Executive of the Charities Regulator has been specified as a 'prescribed person' for the purpose of receiving disclosures of relevant wrongdoings in respect of all matters relating to the regulation of charities pursuant to the Charities Act 2009. The screening process will also involve an assessment of the disclosure, having regard to the provisions of the Protected Disclosures Act 2014, to determine if it meets the criteria for a protected disclosure. The recipient(s) will treat all disclosures as protected, and protect the identity of the discloser in accordance with the procedures, until the assessment is complete. If it is determined that the matter disclosed meets the criteria of a protected disclosure under the Protected Disclosures Act 2014, the matter will be referred for investigation, and the discloser will be notified of this development. Where the assessment concludes that the matter does not meet the criteria for a protected disclosure, the discloser will be advised of this conclusion.

The motivation for making a disclosure is irrelevant when determining whether or not it is a disclosure protected by the Protected Disclosure Act 2014.

Referring Disclosures to Other Bodies

It may be that an issue merits further enquiry, but that the Charities Regulator is not the appropriate body to deal with it as the matter which is the subject of a protected disclosure does not relate to an alleged wrongdoing in respect of matters relating to the regulation of charities under the Charities Act 2009. In some circumstances, the Charities Regulator may suggest to the discloser that he or she might wish to refer his or her disclosure or concern to another prescribed person or appropriate (named) body. 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.

Investigation of Protected Disclosure

The Charities Regulator may meet the person making the protected disclosure to obtain further information about the matters raised. We will assess the information provided by the person to establish:

- Whether we have the legal power to act in the particular set of circumstances;
- Whether there is risk to the charity's assets (including reputation) and/or its beneficiaries, abuse of the charitable status and to the charity sector;
- Whether the concern should be dealt with by another prescribed person, regulator, inspectorate or public body;
- The level of action required by the Charities Regulator.

We will weigh up all the information that is provided in the disclosure during the course of our enquiries, and consider any ongoing risk. If non-compliance or harm to a charity is identified, we will consider if any actions of the charity trustees were misguided or deliberate, any corrective action already taken, and the stated intention of the charity trustees going forward. We will then decide whether we need to take any action in terms of using our formal powers, or whether it is more appropriate and proportionate for us to provide support to the charity trustees, which may be in the form of recommendations for specific actions by the charity.

Feedback to the Discloser

Disclosers making protected disclosures will be provided with periodic feedback, in complete confidence in relation to the matters disclosed and be advised when consideration of the disclosure is complete, except in exceptional cases. However, the overriding requirement when providing feedback is that no information is communicated that could prejudice the outcome of an investigation or any action that may ensue (e.g. enforcement, or other legal action, including prosecution) for example, by undermining the right to fair procedures enjoyed by the charity or a person against whom a report or allegation is made. The Charities Regulator has no obligation to inform the discloser of the progress, or outcome, of any investigation process arising out of a protected disclosure.

12. Record Keeping and Reporting

The Charities Regulator will maintain an appropriate system to record and track protected disclosures. The Protected Disclosures Act 2014 makes it mandatory for all public bodies to publish an annual report in relation to protected disclosures. The Compliance and Enforcement Unit will maintain this system and compile and publish the annual report including setting out the number of protected disclosures received in the preceding year and the action taken, if any.

13. Policy Review

This Policy and forms associated with it will be reviewed regularly and updated as required.

14. Legal Disclaimer

This policy is intended to explain how the Charities Regulator deals with protected disclosures. It is not, nor is it intended to be, a definitive statement of the law in this area. Organisations and individuals may wish to obtain their own independent legal advice when making decisions relating to any of the matters referred to in this document.

Document Reference: Rev 000.

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