



An Rialálaí  
Carthanas

Charities  
Regulator

Policy Title:

# Protected Disclosure Policy

Division Corporate Affairs  
Revision No. 003

## 1.0 Background

The Charities Regulatory Authority (the “Charities Regulator”) is Ireland's national statutory regulator for charitable organisations and is an independent authority established in accordance with the Charities Act 2009<sup>1</sup>, as amended (the “2009 Act”). The key functions of the Charities Regulator are set out in Section 14 of the 2009 Act<sup>2</sup> which includes the requirement to establish and maintain a register of charitable organisations and to ensure and monitor compliance with the 2009 Act.

This Policy is an internal document prepared to assist all Authority and Sub-committee members, external members and staff to understand the obligations of the Charities Regulator as outlined in the *Code of Practice for the Governance of State Bodies (2016)*<sup>3</sup> (“the Code”) In line with the legal requirement under section 21 of the Protected Disclosures Act 2014, to

*“ establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures. The public body shall provide to workers employed by the body written information relating to the procedures...”*<sup>4</sup>.

## 2.0 Policy Statement

The Protected Disclosures Act 2014 took effect from 15th July 2014. The Protected Disclosures Act protects workers<sup>5</sup> from retaliation if they speak up about wrongdoing in the workplace.

Under the Act, all public sector organisations are required to establish and maintain procedures for making protected disclosures by their staff.

The Charities Regulator is strongly committed to supporting a responsible and ethical organisational culture. We recognise and rightly pride ourselves on the integrity that we bring to bear on our daily work. We are a member of Integrity at Work (IAW)<sup>6</sup> - a multi-stakeholder initiative promoting supportive

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<sup>1</sup> Available from: <http://www.irishstatutebook.ie/eli/2009/act/6/enacted/en/html>

<sup>2</sup> Available from: <http://www.irishstatutebook.ie/eli/2009/act/6/enacted/en/print#sec14>

<sup>3</sup> Available from: <https://govacc.per.gov.ie/governance-of-state-bodies/>

<sup>4</sup> Section 1.14, page 15 of the Code, available from <https://govacc.per.gov.ie/wp-content/uploads/Code-of-Practice-for-the-Governance-of-State-Bodies.pdf>

<sup>5</sup> The Term “worker” refers to staff, contractors, consultants, agency staff and interns.

<sup>6</sup> Available from : <https://transparency.ie/integrity-work>

working environments for anyone reporting concerns of wrongdoing.

The Charities Regulator aims to foster a working environment where employees feel comfortable in raising concerns relating to potential wrongdoing within our office and to provide the necessary supports for those that raise genuine concerns. This sort of working environment reflects our core values, especially those of:

- Fairness and transparency;
- Engagement;

In the spirit of these values, all employees should feel comfortable about raising concerns locally with their line manager or that person's manager.

We recognise, however, that this may not always be the case. You may feel uncomfortable raising the concern locally; you may be unhappy with the way in which your concern was dealt with locally; or, you may just want the additional advice and protection that comes with a more formal process. This policy is designed to reassure employees of our commitment to the protected disclosure process; to explain how it works; and to set out (in the attached procedures), the process involved.

Under our Protected Disclosure policy, you can raise a concern centrally with any one of the designated recipients.

For our part, we will listen to your concerns and we will assess the issue carefully. We will ensure that the appropriate investigation takes place and we will keep you informed of progress.

At all times we will respect the confidentiality of your disclosure and will protect you from penalisation. With the exception of the specific instances set out in the Protected Disclosures Act 2014<sup>7</sup> (hereinafter called the '2014 Act' or the 'Act') we will protect your identity, (see section 2.12 below on How is my identity protected in the Procedures.

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<sup>7</sup> Available from eISB website: <http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/html>

## **2.0 Procedures for the making of Protected Disclosures**

Overall responsibility for these procedures rests with the Board of the Charities Regulator. Day-to-day responsibility for the operation of the procedures is delegated to the Corporate Affairs Unit.

### **Scope of Procedures**

#### **2.1 To whom do the procedures apply**

The procedures apply to all workers as defined in section 3 of the Act. This includes current and former employees of the Charities Regulator whether permanent or temporary, retired employees, ex-workers, independent contractors, consultants, trainees and agency workers and Board and Committee members.

The 2014 Act applies to workers and does not include volunteers within that definition. Where a volunteer discloses wrongdoing, it is the policy of the Charities Regulator to deal with such disclosures as if they were made by a worker as defined in the Protected Disclosures Act 2014. That is, the disclosure will be the subject of assessment and investigation where warranted. The Charities Regulator will make the discloser aware of any risks that might arise for them in making a disclosure.

### **Definitions**

#### **2.2 What is not covered by these procedures?**

These procedures do not cover matters of personal interest, e.g. complaints or personal grievances. Such concerns should continue to be reported to HR under relevant HR policies.

A disclosure is not a protected disclosure where the individual knowingly conveys false, misleading, frivolous or vexatious information. Any such allegations may result in disciplinary or other appropriate action.

## 2.3 What is a Protected Disclosure?

Drawing from the Protected Disclosures Act 2014 (No. 14 of 2014), a protected disclosure can be described as a *disclosure of information* (for further information, see 2.4 below) which, in the *reasonable belief* of the worker (see 2.5 below) tends to show one or more *relevant wrongdoings*, (see 2.6 below) and came to the attention of the worker *in connection with the worker's employment* (see 2.8 below). In the following sections we will look more closely at these expressions to explain what they mean.

## 2.4 What do we mean by disclosure of information?

A protected disclosure should contain 'information' which tends to show one or more relevant wrongdoings. The ordinary meaning of disclosing information is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation on the basis of a suspicion that is not founded on anything tangible.

You should not investigate matters yourself to find proof of your suspicion and should not endeavour to do so. All you need to do is disclose the information you have to one of the designated recipients (see section 2.14 below for list), based on a reasonable belief that it discloses a wrongdoing – See 2.10 below to make a disclosure.

## 2.5 What is a 'Reasonable Belief'?

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.

You will not be penalised simply for getting it wrong. The important thing is that you had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

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.

## 2.6 What wrongdoing can be the subject matter of a protected disclosure?

Section 5(3) of the 2014 Act 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.

Note that it does not matter whether the suspected wrongdoing occurred, is occurring or would occur in Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other relevant country or territory.

## 2.7 What do we mean by in connection with the worker's employment?

The information must come to your attention in connection with your employment. However, if the disclosure involves either the employee's or the employer's function to detect or investigate or prosecute, the protections of the 2014 Act do not apply, unless it involves an act or omission on the part of the employer.

## Making a Protected Disclosure

### 2.8 Internal or External Disclosure?

Under the Protected Disclosures Act 2014, protected disclosures can be made within the Charities Regulator and outside of it. In most circumstances it is preferable to make an internal disclosure. The Charities Regulator is committed to supporting and facilitating the making of internal disclosures in order to:

- ensure early detection and remediation of potential wrongdoing;
- provide the safest means for employees to make a disclosure;
- build a responsible and ethical organisational culture; and
- demonstrate good governance and accountability.

You are strongly encouraged therefore to use the internal channels (see section 2.14 on Internal Disclosures below) to make a disclosure.

Note that you may avail of external channels to make a disclosure (see section 16 below) but you should be aware that higher standards generally apply in terms of gaining the protections of the Act when a disclosure is made externally.

### 2.9 Should I be using the Protected Disclosure route at all?

The Department of Public Expenditure and Reform (DPER) has provided financial assistance to Transparency International Ireland<sup>8</sup> to operate a 'Speak Up' helpline. You can call the helpline for free, confidential and expert advice at 1 800 844 866 or download the free guide 'Speak Up Safely' from their website.<sup>9</sup> We encourage you to get professional advice before you decide to use the Protected Disclosure route.

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<sup>8</sup> Transparency International is a global independent anti-corruption NGO.

<sup>9</sup> Transparency International Ireland website - <https://transparency.ie/helpline>

## 2.10 How do I make the Disclosure?

You can make a disclosure verbally or in writing (electronically or manually). Written disclosures are preferable as there is less scope for misunderstanding.

Where you make a disclosure verbally, it will probably be documented by the recipient and, where practicable, you will then be asked to verify the documented disclosure.

You must make a disclosure in the manner set out in the Act to gain the protections of the Act.

Disclosures should:

- A.** State that the disclosure is being made under the Protected Disclosure Act 2014;
- B.** Provide the discloser's name, position in the organisation, place of work and confidential contact details;
- C.** Provide relevant information in respect of the relevant wrongdoing; and
- D.** Provide the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- E.** Indicate whether or not the wrongdoing is still ongoing;
- F.** Indicate whether the wrongdoing has already been disclosed and if so to whom, when and what action was taken; and
- G.** Provide any other relevant information.

## 2.11 How am I protected when I make a disclosure?

When you make a protected disclosure in accordance with the Act and under the guidance of these procedures, you will be protected from penalisation. Penalisation of a person who makes a protected disclosure will not be tolerated by the Charities Regulator and will lead to disciplinary proceedings against the perpetrator where warranted.

The Act defines penalisation as 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, changes of location of place of work, reduction in wages or change in working hours<sup>10</sup>;
- 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.

Sections 11-16 of the Protected Disclosures Act 2014 provide for specific remedies for workers who are penalised for making a protected disclosure. If you believe you have been penalised for making a disclosure of wrongdoing in accordance with these procedures, you should inform one of the designated recipients in order to seek redress. The Charities Regulator will assess and investigate any instances of penalisation and will take appropriate action (which may include disciplinary action against co-workers) where necessary.

## **2.12 How is my identity protected?**

There is a legal obligation on the recipient of a disclosure and any person to whom a disclosure is referred, to keep the discloser's identity confidential. The Charities Regulator will take all reasonable steps to treat disclosures made in accordance with these procedures in a confidential and sensitive manner. Your identity will not be disclosed without your consent, unless it is required by law or necessary for the effective investigation of the relevant wrongdoing.

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<sup>10</sup> Jurisprudence, subsequent to the enactment of the legislation, clarifies that transfer of duties in the Civil Service context does not necessarily amount to penalisation under the Act (source: DPER Guidelines).

A discloser whose identity has been compromised can take an action if the discloser suffers any loss by reason of such a compromised identity. Those involved in the processing of a protected disclosure will be required to ensure that, in relation to document security and filing (whether digital or manual) the discloser's identity is protected.

Where action is to be taken following a protected disclosure, a process will be put in place for consulting with the discloser and, where possible, for gaining the informed consent of the discloser, prior to any action being taken that could identify them. This may include when disclosures are being referred by the public body to an external party.

The recipient of a disclosure and any person to whom a disclosure is referred, will not disclose to another person any information that might identify the discloser except when:

- A.** the recipient shows that he or she took all reasonable steps to avoid disclosing the identity of a discloser;
- B.** the recipient has a reasonable belief that the discloser does not object to the revelation of identity;
- C.** the recipient has a reasonable belief that it was necessary for:
  - I. the effective investigation of the wrongdoing concerned;
  - II. the prevention of serious risk to State security, public health, public safety and the Environment; or
  - III. the prevention of crime or the prosecution of a criminal offence crime or is warranted by the public interest.
- D.** 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. The discloser will also be informed of the applicable review process (see section 2.24 on Review below), which may be invoked by the discloser in respect of this decision. Where at all possible, the discloser will be offered a review before his or her identity is disclosed.

### **2.13 Can I make an anonymous disclosure?**

You can make an anonymous disclosure but there are important distinctions between anonymous disclosures and disclosures where you provide your name. We would encourage any worker who makes

a disclosure to provide their name and contact details as they may need to be contacted to clarify information disclosed. Remember that the recipient must protect your identity.

Anonymous disclosures are not excluded from the protection of the 2014 Act and the Charities Regulator will act upon anonymous disclosures to the extent that this is possible. However, our ability to investigate may be constrained in the absence of the knowledge of the identity of the discloser because we cannot follow-up with you for further information.

More importantly, the protections available to you under the Act 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. Finally, you cannot obtain redress under the 2014 Act without identifying yourself.

## 2.14 Internal Disclosures

A group, to be known as the 'Protected Disclosures Group' or 'PDG' has been established by the Charities Regulator. The PDG consists of:

1. Chair of the Finance Audit Risk and Governance Committee
2. CEO of the Charities Regulator
3. Director of Legal Affairs and Registration

Each one of these office holders is a designated recipient for disclosures. Disclosures may be made to any one of the members of the PDG, regardless of which business unit you happen to work in.

On receipt of a disclosure, the recipient will convene a meeting of not less than two members of the PDG to assess the disclosure; determine if it is a protected disclosure; and refer it to the appropriate channel for investigation. Other Heads of Business Units may have a role subject to the agreement of the members of the PDG and depending on the nature of the case.

If any member of the PDG has a conflict of interest in relation to a disclosure, they must declare it and absent themselves from the case.

Details of the steps to be taken by the PDG following receipt of a disclosure are set out in the sections on assessment (section 2.19 below on Assessment of a Protected Disclosure) and investigation (section 2.20 below on Investigation of a Protected Disclosure).

## 2.15 External Disclosures

The Act identifies the following avenues for making a protected disclosure outside of the employer (in this case, the Charities Regulator):

**a)** A ‘responsible person’ outside the Employer; if the employee reasonably believes that the wrongdoing relates to a person other than the employee’s employer or where that responsible person has legal responsibility for something in respect of which a wrongdoing may have occurred. For example, an agency worker might make a disclosure to the organisation in which they are working rather than to their own employer.

**b)** A ‘prescribed person’ (i.e. as prescribed by Statutory Instrument [339/20143<sup>11</sup>](#)) such as the Comptroller and Auditor General, the Data Protection Commissioner, the Chief Executive of the Health and Safety Authority etc<sup>12 13</sup>. In such cases, an additional requirement applies: the discloser must believe that the information disclosed and any allegations contained in it are substantially true.<sup>14</sup> The Charities Regulator is a ‘prescribed person’ and can be contacted in relation to all matters relating to the regulation of charities pursuant to the Charities Act 2009 (No. 6 of 2009).

**c)** A minister of the government on whom any function relating to the public body is conferred or imposed by or under any enactment. Note that in the event of a worker in the Charities Regulator making a disclosure to the Minister for State with responsibility for Community Development and

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<sup>11</sup> As amended by SI 448/2015

<sup>12</sup> The Minister for Public Expenditure and Reform signed the Protected Disclosures Act 2014 (Disclosure to Prescribed Persons) Order 2020 in September 2020. Each person listed is prescribed to be the recipient of disclosures of relevant wrongdoings falling within the description of matters specified in column (3) of the Schedule in relation to the person.

<sup>13</sup> List of Prescribed persons available from Gov.ie Website: <https://www.gov.ie/en/collection/41798-protected-disclosures-whistleblowing-list-of-prescribed-persons/>

<sup>14</sup> This is a higher evidential standard than a ‘reasonable belief’.

Charities, at the Department of Rural and Community Development, it will be treated as and dealt with under the internal procedures.

**d)** A legal adviser, if it is made by a worker in the course of obtaining legal advice from, for example, a solicitor, a barrister or a trade union official).

**e)** Alternative external disclosures (in very limited circumstances). The safest route to take when making a disclosure from the point of view of ensuring your protection is an internal disclosure and we would encourage you to use the internal option. However, if that is not appropriate and you prefer to make an external disclosure, then of the 5 alternative options outlined above, a), b), c) or d) are preferable over e).

In relation to option e), which includes potentially disclosure in the public domain such as to the media, you should be conscious that there are stringent requirements for this category of disclosure to qualify as a protected disclosure. In order for such a disclosure to be protected:

- you must reasonably believe that the information disclosed and any allegation is **substantially true**;
- the disclosure is not made for personal gain; and
- the making of the disclosure in public is, in all the circumstances, reasonable.

In addition to these three criteria, one or more of the following conditions must be met:

**A.** at the time of making the disclosure the worker reasonably believes that he/she will be subjected to penalisation by the employer if they make the disclosure under the internal process or to a 'prescribed person';

**B.** in a case where there is no appropriate prescribed person (Regulatory Body) in regard to the wrongdoing, the worker reasonably believes that evidence will be destroyed or concealed if the disclosure is made directly to the employer;

**C.** no action was taken in regard to a previous disclosure of the same nature made by the worker; and

**D.** the relevant wrongdoing is of an exceptionally serious nature. If you decide to make a disclosure to an external party, it will be for that party to decide if it is, in fact, a protected disclosure (the assessment) and to determine the nature of any investigation that may take place. In such cases, the Charities Regulator will cooperate fully with the investigation.

## **2.16 Special Cases**

Sections 17 and 18 of the 2014 Act address the issue of protected disclosures that relate to issues of law enforcement and national security and defence respectively. In essence, external disclosures of information related to either of these areas would not be protected unless they meet specific, additional requirements.

## **2.17 Section 17 Disclosures**

Section 17 applies to a disclosure of relevant information that might reasonably be expected to facilitate the commission of an offence or to prejudice or impair the:

- a) prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for any of those matters;
- b) enforcement or administration of, or compliance with, any law;
- c) lawful methods, systems, plans or procedures employed for ensuring the safety of the public or the safety or security of persons or property;
- d) fairness of proceedings before a court or tribunal;
- e) security of a relevant institution, or
- f) security of any system of communications of the Garda Síochána, the Defence Forces or a relevant institution.

Section 17 of the Act should be consulted further when a disclosure of such information is contemplated.

## 2.18 Section 18 Disclosures

Section 18 applies to a disclosure of information that might reasonably be expected

**a)** to affect adversely—

- i. the security of the State;
- ii. the defence of the State; or
- iii. the international relations of the State, or

**b)** to reveal, or lead to the revelation of, the identity of a person who has given information in confidence to a public body in relation to the enforcement or administration of the law or any other source of such information given in confidence.

It is unlikely that Section 18 disclosures would arise in relation to the work of the Charities Regulator but in the event that a discloser believes a disclosure under this section of the Act would be appropriate, a Judge or a retired judge of the High Court has been appointed as the Disclosure Recipient under Schedule 3 of the Protected Disclosures Act 2014 to deal with disclosures made under section 18 of the Act.

A disclosure of information within the terms of [Section 18](#) of the Protected Disclosures Act may be made to the Disclosures Recipient either (i) In writing in a sealed envelope marked “Confidential: For Attention of the Addressee Only” posted or delivered to the above address: or (ii) In person by appointment with the Disclosures Recipient, made by e-mail: [protected.disclosure@confidentialrecipient.gov.ie](mailto:protected.disclosure@confidentialrecipient.gov.ie).

## 2.19 Assessment of a Protected Disclosure

When a disclosure of alleged wrongdoing is made to any one of the designated recipients, that individual will convene the Protected Disclosure Group as per the section on Internal Disclosures above. An initial screening process, involving a risk assessment, will be undertaken without delay by the PDG. The screening process will also involve an assessment of the disclosure, having regard to the provisions of the 2014 Act, 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.

The assessment process will include the following steps:

- a)** Clarifying the basis of the concerns raised with the employee and establishing what evidence is available to support the concern.
- b)** Considering any personal interest the employee might have in the issue concerned.
- c)** Gauging the risk associated with the issue and taking immediate action if the alleged wrongdoing involves a serious loss or danger to others.
- d)** Carrying out all relevant enquiries promptly, sensitively and discreetly, ensuring to protect the identity of the discloser (if it is necessary to reveal the employee's identity to undertake an effective enquiry, the PDG will consult with the relevant person in the first instance).

If it is determined that the matter disclosed meets the criteria of a protected disclosure under the 2014 Act, the matter will be referred for investigation (see section 2.20 following) and the discloser will be notified of this development.

Where the assessment concludes that the matter does not meet the criteria of a protected disclosure (e.g. where the issue is a personal grievance or complaint) the PDG will advise the discloser of this conclusion and offer advice on the appropriate steps to take.

## **2.20 Investigation of a Protected Disclosure**

Where the assessment by the PDG concludes that the matter reported meets the criteria of a protected disclosure issue, it will be referred for investigation. The nature of the investigation will vary depending on the seriousness of the matter disclosed and may include referral to an outside body, including An Garda Síochana.

It is envisaged that most cases will be investigated by an external agency retained by the Charities Regulator for such purposes. This will ensure that the necessary level of experience, expertise and independence is available.



In some instances, where the issue is deemed to be straightforward and capable of resolution without resort to a full external investigation, the PDG may conduct the investigation. In such cases the investigation and conclusion will, however, be the subject of validation by the external agency.

In all cases, the discloser will be informed by the PDG of the chosen route of investigation. Regardless of which route the investigation takes, it will embody the following principles:

- a)** The investigation will be carried out in a manner which is fully consistent with the principles of natural justice;
- b)** Evidence will be sought from any relevant witnesses;
- c)** The investigation will assess whether the disclosure report is based on a reasonable belief but ungrounded; based on reasonable belief and grounded; or a deliberately false report;
- d)** The Charities Regulator will take appropriate action if the disclosure is grounded;
- e)** If the disclosure is deliberately false, the Charities Regulator may consider disciplinary action;
- f)** Written feedback will be provided to the discloser within 20 days of the date of referral for investigation (including any proposed action) regardless of whether the investigation is concluded by that time.

On completion of the process the PDG will report the outcome, including details of the action taken, to the discloser.

## **2.21 Feedback to the discloser**

Employees making protected disclosures will be provided with periodic feedback, in 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 the investigation or any action that ensues (e.g. disciplinary, or other legal action, including prosecution) for example, by undermining the right to fair procedures enjoyed by the 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 disciplinary process involving another worker which may arise on foot of an investigation arising out of a protected disclosure. In general, such information is confidential between the employer and the worker

who is the subject of the disciplinary process. The discloser will be informed and assured that appropriate action has been taken but is not generally entitled to know what that action was.

## **2.22 Rights of the Respondent in an investigation**

The general principles of natural justice and fair justice procedures will apply in respect of any employee of the Charities Regulator who is the subject (the respondent) of any investigation. The Charities Regulator will take great care in providing information to the person who has made the disclosure to ensure that it does not breach the legal rights of any person who has been accused of wrongdoing. The Charities Regulator will arrange that appropriate supports and protections are available as and when appropriate.

It is important to note that the principles of natural justice do not require a person associated with an allegation of wrongdoing to be notified of the receipt of an allegation. Nor does the person accused of wrongdoing have the right to know the identity of the worker who has made the report.

Where an investigator wishes to question or seek information from the person accused of wrongdoing, the subject is entitled to be given details of what is alleged and given the opportunity to respond and to contest the allegation.

In the interests of natural justice, the person(s) against whom the allegation is made will be informed in writing of the allegation and all of the supporting evidence, and will be allowed full opportunity to comment at an appropriate stage in the process and before the investigation is concluded.

The person accused of wrongdoing is entitled to be informed of the outcome of the investigation and is entitled to a copy of the investigation report if it concludes that a wrongdoing has occurred.

## **2.23 Outcomes following an investigation**

The following are potential outcomes on conclusion of the investigation of the matter disclosed:

The disclosure is upheld or partly upheld leading to:

- the malpractice being stopped and the system weaknesses identified and addressed or the concern being addressed in so far as is reasonable;

- disciplinary action being taken against the wrongdoer depending on the results of the investigation; and
- the matter being referred to an outside body, including An Garda Síochána.

The disclosure is not upheld leading to:

- no action if the allegation is based on a reasonable belief but proves to be unfounded;
- disciplinary action being considered against the discloser in the event of the claim being found to be malicious or otherwise not based on a reasonable belief.

If the outcome of the investigation of a disclosure is not to the satisfaction of the worker that reported the issue, then s/he has the right to seek a review (see section 2.24 following).

## **2.24 Review**

The discloser may seek a review of the following:

- a) Any decision made to disclose the identity of the discloser (except in exceptional cases);
- b) The outcome of any assessment/investigation undertaken in respect of the protected disclosure; and
- c) The outcome of any assessment/investigation in respect of any complaint of penalisation.

Reviews will be undertaken by a nominated person appointed by the Chairperson of the Board. Where a decision is taken to disclose the identity of the discloser, where at all possible, the discloser will be offered a review before their identity is disclosed.

## **Other considerations**

### **2.25 Motivation**

Your motivation for making a 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 your motivation for making the disclosure, and you will be protected so long as you reasonably believe that the information disclosed tends to show a wrongdoing.

However, disclosure of a wrongdoing does not necessarily confer any protection or immunity on you in relation to any involvement that you may have had in that wrongdoing.

## **2.26 Disciplinary Record of Discloser and other related matters**

Where a worker makes a disclosure of alleged wrongdoing it will be given appropriate consideration. The Charities Regulator will generally focus on the disclosure made (the message), as opposed to any disciplinary (or other) issues related to the person making the disclosure (the messenger).

In general where a disclosure is made during an investigation, disciplinary or other process, this should not affect those distinct processes. However, an exception might be made where the worker can demonstrate that the investigation, disciplinary or other action is found to be a form of penalisation for making a protected disclosure.

## **2.27 Mandatory Reporting**

The 2014 Act does not oblige a worker to make a protected disclosure and it also does not absolve any worker from pre-existing mandatory obligations to report contained in other legislation. For example, there are other pieces of legislation applying to certain sectors (financial, medical etc.) where reporting of certain matters is mandatory.

## **2.28 Non-restriction of rights to make protected disclosures**

In accordance with the 2014 Act the Charities Regulator will not have or tolerate clauses in agreements that prohibit or restrict the making of protected disclosures, exclude or limit the operation of any provision of the Act, preclude a person from bringing any proceedings under, or by virtue of, the Act and / or precluding a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.

## **2.29 Support available to workers making disclosures**

The Charities Regulator is committed to ensuring that workers are supported in making protected disclosures. The designated recipients will provide that support in the first instance where internal disclosures are concerned. Support is also available from the Civil Service Employee Assistance Service to workers who make disclosures of wrongdoing.

The Charities Regulator is a member of the Integrity at Work (IAW) programme, a Transparency International Ireland initiative that helps foster workplaces where people are supported to raise concerns of wrongdoing and act with integrity. As part of our commitment to protecting workers who raise concerns of wrongdoing, the Charities Regulator has signed and complies with the Integrity at Work (IAW) pledge to ensure that workers reporting wrongdoing will not face penalisation and that action will be taken in response to the concerns raised. A copy of the Pledge is located at Appendix one.

If an individual is considering reporting a concern, free and confidential advice is available from TI Ireland's Speak Up Helpline at 1800 844 866, Monday to Friday 10am to 6pm. They can also make an enquiry via secure online form or encrypted text online<sup>15</sup>. Further information is available in the [Speak Up Safely video](#) and Speak Up Safely Guide<sup>16</sup>.

### **2.30 Record keeping and Reporting**

The Charities Regulator will maintain an appropriate case management system to record and track protected disclosures. The Act makes it mandatory for all public bodies to publish an Annual Report in relation to protected disclosures. Corporate Affairs 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).

### **2.31 Evaluation and Review of the Protected Disclosures Policy and these Procedures**

This policy will be reviewed at minimum intervals of two years or when required by the Charities Regulatory Authority. The Corporate Affairs Unit will monitor the operation of the procedures on an ongoing basis and report to the Board on its findings.

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<sup>15</sup> Located at: <https://www.transparency.ie/helpline/contact-speakup#Secure%20report>

<sup>16</sup> Located at Integrity at Work website: <https://integrityatwork.ie/resources/guidance/>

**Disclaimer**

*It should be noted that these procedures do not purport to be a statement or legal interpretation of the relevant sections of the Acts or of any of the Regulations made under the Acts. They are intended as a general guide to the legislation and to the making of a protected disclosure and are not a substitute for professional legal advice.*

## Appendix one: The Integrity at Work Pledge



### THE INTEGRITY AT WORK PLEDGE

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

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

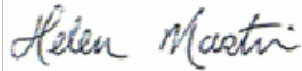
- a. Promote the reporting of wrongdoing or the risk of harm to a responsible person inside the organisation or external bodies as appropriate.
- b. Provide comprehensive information about the types of disclosures that can be made, by whom and in respect of what.
- c. Encourage our workers to seek professional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

Pledge and related policies and procedures and are adequately trained in handling a report.

- I. Publicise our commitment to the Integrity at Work initiative with our workers and other relevant stakeholders.

\* "Worker" refers to staff, contractors, consultants, agency staff and interns

Details of our Protected Disclosures Policy and Procedures can be found on our website at [www.charitiesregulator.ie](http://www.charitiesregulator.ie)



Signed

\_\_CEO\_\_10/\_AUG /\_2021



Signed

Chairman