

Charities Regulator's Protected Disclosures Policy and Procedure - External Reporting Channels

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1.0 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. We are responsible for the registration and regulation of all charitable organisations ('charities') that carry out activities in the Republic of Ireland.

We also deal with concerns about charities and under Part 4 of the Charities Act 2009. The Charities Regulator has the power to appoint inspectors to investigate the affairs of any charity.

Additionally, we provide services to certain charities, including authorising the appointment of new charity trustees and the disposition of charity property where a charity does not have a power of sale to deal with the property. We also approve Cy-près schemes authorising a change to the beneficiaries of, or conditions that apply to, a charitable gift such as a bequest in a will.

The functions of the Charities Regulator are to -

- 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.

2.0 Policy Statement

The Protected Disclosures Act 2014 as amended by the Protected Disclosures Act 2022 (the “Protected Disclosures Act”), provides a statutory framework within which workers can raise concerns regarding relevant wrongdoing that have come to their attention in the course of their work in the knowledge that they can avail of significant employment and other protections in the event that they are penalised by their employer or suffer any detriment for making a protected disclosure.

The Charities Regulator is committed to ensuring that it fully meets its statutory obligations as a prescribed person in relation to protected disclosures.

3.0 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 Reporting

Person¹ 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.

4.0 Purpose

In this document we set out the procedures that we have put in place to facilitate workers, as defined in the Protected Disclosures Act, who wish to make a protected disclosure to the Charities Regulator under section 7 of the Protected Disclosures Act 2014.

The purpose of this document is to provide guidance to workers involved with registered charities on the procedures to be followed should they wish to make a protected disclosure to the Charities Regulator.

This document is for information purposes only and does not constitute legal advice and should not be relied on as such.

5.0 Application

The Chief Executive of the Charities Regulator is a prescribed person under the Protected Disclosures Act in relation to all matters relating to the regulation of charities pursuant to the Charities Act 2009² and have overall responsibility for ensuring that protected disclosures are dealt with in accordance with the Protected Disclosures Act.

Day-to-day responsibility for the operation of the procedures outlined in this document is delegated to the Compliance and Enforcement Unit. The Charities Regulator's Director of Compliance & Enforcement, its Head of Compliance Monitoring and Head of Investigations & Enforcement are designated persons under section 7A(7) of the Protected Disclosures Act.

¹ Reporting Person is the person who makes the protected disclosure in line with the Protected Disclosures Act 2014 as amended

² Article 2 of the Protected Disclosures Act 2014 (Disclosure to Prescribed Persons) Order 2020 (S.I. No. 367 of 2020)

These procedures apply to all workers that may be involved with charities as defined in section 3 of the Protected Disclosures Act, which includes:

- (a) current employees whether permanent or temporary;
- (b) former employees, retired employees or ex-employees;
- (c) independent contractors and consultants;
- (d) trainees;
- (e) agency staff;
- (f) directors or trustees;
- (g) shareholders;
- (h) volunteers; and
- (i) job applicants.

The Protected Disclosures Act only applies to workers and does not apply to the general public. Protected disclosures by 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 online.³

6.0 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 a work related context and is disclosed in the manner prescribed in the Protected Disclosures Act. Generally speaking, the Act encourages workers to make a first report of relevant information to their employer.

A worker 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.

³ Available at: www.charitiesregulator.ie

6.1 Explanation of key terms

- **Relevant Information:** means factual information that comes to a worker's attention in a work-related context 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. A worker is not required to investigate or gather evidence of wrongdoing.
- **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 knowingly false disclosure will not attract the protections of the Protected Disclosures Act.

- **Relevant Wrongdoing:** in respect of protected disclosures to the Charities Regulator from workers, refers to wrongdoing in charities. Section 5(3) of the Protected Disclosures 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.

A matter concerning interpersonal grievances exclusively affecting a Reporting Person does not constitute a relevant wrong doing.

7.0 Anonymous Disclosures

Anonymous disclosures are not excluded from the protection of the Protected Disclosures Act. The Charities Regulator may act 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. It may also have implications for the reporting person if they want to avail of the full protections of the Protected Disclosures Act, for example, in relation to penalisation.

A worker who makes an anonymous report and is subsequently identified and penalised is treated as having made a protected disclosure under the Protected Disclosures Act and is entitled to the same protections as a Reporting Person.

8.0 Obtaining Advice

The Charities Regulator cannot offer any legal advice.

The Department of Public Expenditure, NDP Delivery and Reform 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 website.⁴ 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.

⁴ Speak Up Safely' Website – available at: <https://transparency.ie>

9.0 Protections for Workers

9.1 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 Reporting Person'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.

Where a protected disclosure is made to the Charities Regulator, the Protected Disclosures Act provides that the Charities Regulator must not disclose to another person any information that might identify the Reporting Person, except where:

- (a) the Reporting Person gives their explicit consent,
- (b) disclosure is a necessary and proportionate obligation imposed by law,
- (c) the Charities Regulator shows that it took all reasonable steps to avoid disclosing the identity of the Reporting Person, or
- (d) the Charities Regulator reasonably believes that disclosing the identity is necessary for the prevention of serious risk to the security of State, public health, public safety or the environment.

Where it is decided that it is necessary to release information that may or will disclose the identity of the Reporting Person, the Reporting Person will be informed of this decision where possible in advance of the release, except where such notification would jeopardise:

- (a) the effective investigation of the relevant wrongdoing concerned,
- (b) the prevention of serious risk to the security of the State, public health, public safety or the environment, or
- (c) the prevention of crime or prosecution of a criminal offence.

9.2 Protection from Penalisation

The Protected Disclosures Act provides specific remedies for workers who are penalised for making a protected disclosure. Penalisation includes any direct or indirect act or omission that may cause unjustified detriment to a worker and includes:

- (a) suspension, lay-off, or dismissal;
- (b) demotion, loss of opportunity for promotion, withholding of promotion;
- (c) transfer of duties, change of location of place of work, reduction in wages, change in working hours;
- (d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty);
- (e) coercion, intimidation, harassment, ostracism;
- (f) discrimination, disadvantage, unfair treatment;
- (g) injury, damage, loss, withholding of training, a negative performance assessment or employment reference;
- (h) failure to convert a temporary contract to a permanent one where a legitimate expectation existed;
- (i) failure to renew or early termination of a temporary employment contract;
- (j) harm, including to the workers reputation, particularly in social media, or financial loss, including loss of business and loss of income;
- (k) black listing on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry;
- (l) early termination or cancellation of a contract for goods or services,
- (m) cancellation of a licence or permit;
- (n) psychiatric or medical referrals.

In broad terms, persons making a protected disclosure to the Charities Regulator may be entitled to remedies or defences under the Protected Disclosures Act 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.

Immunity from Civil Liability & Legal Defence Pursuant to section 14(1) of the Protected Disclosures Act, there is no cause of action against a Reporting Person in civil proceedings who makes a protected disclosure, in respect of the protected disclosure, other than proceedings for defamation.

Pursuant to section 15 of the Protected Disclosures Act, in a prosecution of a person for any offence prohibiting or restricting the disclosure of information, it is a defence for the person to show that, at the time of the alleged offence, the disclosure was, or was reasonably believed by the person to be, a protected disclosure.

These sections mean that there is no liability for a breach of confidentiality where a protected disclosure is made to the Charities Regulator in accordance with the Protected Disclosures Act.

10.0 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 as amended;
- (b) the Reporting Person'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 –

by Email to: protecteddisclosures@charitiesregulator.ie

by post to:

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

or,

by phone to: (01) 6331550

Please note that telephone calls are not recorded.

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

11.0 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.

The Charities Regulator will acknowledge receipt of the protected disclosure within 7 days of receipt of the disclosure, except where the Reporting Person explicitly requests otherwise, the protected disclosure is anonymous and no contact details have been

provided by the Reporting Person, or where the Charities Regulator reasonably believes acknowledging receipt of the report would jeopardise the protection of the identity of the Reporting Person.

11.1 Initial Assessment

When a disclosure of alleged wrongdoing is received, an initial assessment will be carried out. There are four possible outcomes from the initial assessment:

- (a) there is prima facie evidence that the disclosure of alleged wrongdoing does not meet the requirements of being a protected disclosure pursuant to the Protected Disclosures Act,
- (b) there is prima facie evidence that the alleged wrongdoing meets the requirements of being a protected disclosure and the matter raised is within the statutory remit of the Charities Regulator, but the wrongdoing is clearly minor and does not require further follow up,
- (c) there is prima facie evidence that the alleged wrongdoing meets the requirements of being a protected disclosure but the matter raised is not within the statutory remit of the Charities Regulator, or
- (d) there is prima facie evidence that the alleged wrongdoing meets the requirements of being a protected disclosure and the matter raised is within the statutory remit of the Charities Regulator.

The Charities Regulator will treat all disclosures as protected, and protect the identity of the Reporting Person in accordance with the procedures, until the initial assessment is complete.

The Charities Regulator may seek further information from the Reporting Person to ascertain whether the disclosure falls within the remit of the Charities Regulator and / or there is prima facie evidence that the alleged wrong doing has occurred.

Where a protected disclosure has been made anonymously it will not be possible to acknowledge receipt of the disclosure.

11.2 Outcome of Initial Assessment

Where it is determined that there is no prima facie evidence that alleged wrong doing may have occurred, the Charities Regulator will notify the Reporting Person of its decision and the reason for this decision.

Where it is determined that there is prima facie evidence that alleged wrong doing has occurred but that the wrongdoing is minor and does not require follow up, the Charities Regulator will notify the Reporting Person of its decision and the reason for this decision.

Where it is determined that there is prima facie evidence that alleged wrongdoing has occurred but that the matter is not within the statutory remit of the Charities Regulator, the Charities Regulator will notify the Reporting Person of this and will transmit the protected disclosure to such other prescribed person as the Charities Regulator considers appropriate, or the Protected Disclosures Commissioner and will notify the Reporting Person of its decision and the reason for this decision. Please see the section “Referring Disclosures to Other Bodies” for further information.

Where it is determined that there is prima facie evidence that alleged wrongdoing has occurred and the matter is within the statutory remit of the Charities Regulator the matter will be referred for investigation The Reporting Person will be notified of this development. See “Investigation Procedures” for further information.

Where a protected disclosure has been made anonymously it will not be possible to notify the Reporting Person of the outcome of the initial assessment.

11.3 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 such circumstances, the Charities Regulator will transmit the protected disclosure to such other prescribed person as the Charities Regulator considers appropriate, or the Protected Disclosures Commissioner. In some cases the Charities Regulator may need to refer the matter to An Garda Síochána with the statutory power and function to investigate particular matters.

11.4 Investigation of Protected Disclosures

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.

11.5 Communications with the Reporting Person

Where the protected disclosure is a matter being investigated by the Charities Regulator, the Designated Person will maintain communications with the Reporting Person. The Reporting Person will be provided feedback in relation to the protected disclosure within three months from the date of acknowledgement and upon written request at three monthly intervals thereafter. If the matter is complex, the Designated Person will inform the Reporting Person of this and provide feedback on the protected disclosure within six months. 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.

Where a protected disclosure has been made anonymously it may not be possible to provide feedback.

12.0 Record keeping and reporting

The Charities Regulator is required to keep a record of every report made to the Charities Regulator under the Protected Disclosures Act. The report shall be kept for no longer than is necessary and proportionate.

For anonymous reports the Charities Regulator must make a record of the anonymous report as appropriate. A record of an anonymous report shall be kept for no longer than is necessary and proportionate.

Please note that the Charities Regulator does not record calls, therefore, where an oral report is made by telephone, the Charities Regulator shall make a record of the report. The Charities Regulator shall offer the Reporting Person the opportunity to check, rectify and agree the record of the report. This does not apply to anonymous verbal reports.

Where a Reporting Person requests a meeting with the Charities Regulator, the Charities Regulator shall ensure accurate records of the meeting are kept in durable and retrievable form. The meeting may be recorded or minutes of the meeting will be kept. The Reporting Person shall be provided the opportunity to check, verify and agree the minutes of the meeting by signing them.

Minutes and notes of meetings with a Reporting Person shall be kept for no longer than is necessary and proportionate.

The Protected Disclosures Act 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 arrange for publication of the annual report which will include the number of protected disclosures received in the preceding year and the action taken, if any.

13.0 Data Protection

Personal data shall be processed in accordance with all applicable data protection laws.

Please note that section 16B of the Protected Disclosures Act limits some of the rights and obligations of the General Data Protection Regulation (“**GDPR**”) in respect of relevant data.⁵

Specifically, Articles 5, 12 – 22, and 34 (in so far as these provisions relate to obligations in Articles 12 – 22) are restricted in respect of relevant data:-

- 1) to the extent necessary and proportionate for the purposes of—
 - a) safeguarding the important objectives of general public interest, and
 - b) the protection of the data subject or the rights and freedoms of others,and
- 2) to the extent, and as long as, necessary to prevent and address attempts to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations, or attempts to find out the identity of reporting persons.

14.0 Policy Review

This policy and forms associated with the procedures reflected in this document will be reviewed annually and updated as required.

15.0 Legal Disclaimer

This document is not, nor is it intended to be, a definitive statement of the law and it does not constitute legal advice. The Charities Regulator recommends that persons obtain their own legal advice where necessary. The Charities Regulator accepts no responsibility or liability for any errors, inaccuracies or omissions in this document.

⁵ Relevant data means personal data, including special categories of personal data within the meaning of Article 9 of the General Data Protection Regulation and data relating to criminal convictions and offences within the meaning of Article 10 of the General Data Protection Regulation, processed for the purposes of this Act including receiving, dealing with or transmitting a report or follow-up on such a report;

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