

# GUIDANCE ON PROTECTED DISCLOSURE

<b>Document Title</b>	Guidance on Protected Disclosure – March 2018
<b>Corresponds to</b>	Guidance on Protected Disclosure - July 2015
<b>Version</b>	Version 2
<b>Owner</b>	Director
<b>Date</b>	March 2018
<b>Review</b>	March 2019

## 0 Table of Contents

1	Introduction .....	3
2	To whom does this guidance apply? .....	3
3	Key principles underlying the guidance .....	3
4	What is a protected disclosure?.....	4
5	What type of disclosure is covered by the guidance?.....	4
6	What type of disclosure is not covered?.....	5
7	When should an employee make a disclosure?.....	5
8	Making a disclosure.....	6
9	Receiving a Disclosure.....	6
10	Investigation of a Disclosure .....	7
11	Records.....	8
12	Further information/Review of Guidance.....	8
13	Appendices.....	9
14	Appendix A: Guidance for recipients of disclosures .....	9
14.1	Your task as the initial recipient- preliminary evaluation .....	9
14.2	The issue of confidentiality.....	10
14.3	Keeping the discloser informed.....	10
14.4	Keeping the organisation informed .....	11
14.5	Initial Recipient of a disclosure - Checklist .....	12
15	Appendix B: Guidance for investigation of disclosures .....	13
15.1	Your task as the investigator .....	13
15.2	Keeping the discloser informed.....	14
15.3	Upon completion of your investigation.....	14
15.4	Investigation of a disclosure - Checklist.....	16

## 1 Introduction

The purpose of the Protected Disclosures Act 2014 is to provide a robust statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the workplace 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 doing so.

The 2014 Act 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. The 2014 Act became operational on 15th July 2014.

## 2 To whom does this guidance apply?

This guidance is applicable to all workers and provides protections for those beyond the usual definition of employees by also including contractors, consultants, agency staff trainees and interns.

## 3 Key principles underlying the guidance

Oberstown Children Detention Campus (known as Oberstown) is committed to fostering an appropriate environment for addressing concerns and supporting staff in 'speaking-up' relating to potential wrongdoing in the workplace and to providing the necessary support for staff who raise genuine concerns. A worker who makes a protected disclosure is protected from penalisation (or threatened penalisation), which includes suspension, lay-off or dismissal, demotion, and unfair treatment.

Anyone who has a reasonable belief that the information contained in his or her disclosure shows or tends to show that wrongdoing covered by the guidance has occurred, is occurring or is likely to occur, will be protected against penalisation even if the worker's concern is ultimately misguided or mistaken.

Where an issue is raised under the 2014 Act, the following principles will be applied:

- The concern will be treated seriously and investigated where that is considered appropriate
- Where an investigation takes place, the identity of the person raising the concern will be safeguarded insofar as this is practically possible
- The person raising the concern will be advised on how the issue has been addressed, including the outcome of any investigation

- The person raising the concern 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.

Oberstown will take all reasonable steps to treat disclosures made under this guidance in a confidential and sensitive manner. Oberstown 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.

If an employee believes that he/she has been penalised for the making of a disclosure of wrongdoing in accordance with this guidance they should inform the In Line Manager or member of the Campus Senior Management Team, (CSMT) to seek redress, depending on the circumstances.

This guidance document relates to the reporting of serious wrongdoing as defined in the 2014 Act and is not intended to act as a substitute for normal day-to-day operational reporting. Neither is it intended to act as a substitute for existing grievance procedures all of which remain in place.

#### 4 What is a protected disclosure?

A protected disclosure is the disclosure of 'relevant information'. To qualify as relevant information:

- A worker must reasonably believe that the information disclosed tends to show one or more 'relevant wrongdoings'.
- The wrongdoing must come to the workers attention in connection with his or her employment. For example, a disclosure will not be protected if it relate to matters in someone's personal life outside and unconnected to the workplace.

#### 5 What type of disclosure is covered by the guidance?

A protected disclosure is a disclosure of information, which in the reasonable belief of the worker tends to show a 'relevant wrongdoing'. The definition of 'relevant wrongdoing' is widely drafted and includes such matters as:

- criminal offences;
- failure to comply with legal obligations;
- miscarriages of justice;
- health and safety matters;
- environmental damage;

- unlawful or improper use of funds or resources of a public body; and,
- an act or omission by or on behalf of a public body which is oppressive, discriminatory,
- grossly negligent or constitutes gross mismanagement.

If information relating to these matters is likely to be concealed or destroyed, such concealment or destruction is also a 'relevant wrongdoing'.

## 6 What type of disclosure is not covered?

The aim of this guidance is to assist and support employees in speaking out about potential wrongdoing covered in section 5 that has come to their attention in the workplace. It does not cover personal complaints or personal grievances. Procedures for dealing with personal grievance problems are available in the Staff Handbook and also available from the HR Department on the campus.

The guidance does not cover a disclosure where the employees knowingly convey false, misleading, frivolous or vexatious information. If it transpires that an employee makes a disclosure, which they know to be false or do not believe to be true, Oberstown reserves the right to take disciplinary or other appropriate action.

## 7 When should an employee make a disclosure?

An employee should make a disclosure if, in their reasonable belief, any of the wrongdoings outlined in section 5 has occurred, is occurring or is likely to occur or there has been a breach of organisational guidance such that harm may be arising to others or to the organisation.

Whether a disclosure of a relevant wrongdoing is protected or not will depend upon the way in which the disclosure is made. The legislation provides for five avenues of disclosure:

- to an employer or other responsible person;
- to a prescribed person;
- to a Minister;
- to a legal adviser; or
- to a third party in other cases

## 8 Making a disclosure

Any member of staff who has a reasonable belief in relation to one or more of the serious wrongdoings set out in section 5 should disclose the relevant information to his/her Line Manager in the first instance.

Where the discloser is at manager level he/she should make the disclosure to his/her line manager at senior management level. Where the discloser is at senior management level, he/she should make the disclosure to the Director or to chairperson of the Board of Management as appropriate.

The 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. This will facilitate the assessment as to whether the disclosure warrants investigation. The specific nature of the potential wrongdoing should be communicated at the time the disclosure is made.

While a disclosure may be made anonymously, it should be noted that the extent to which this guidance can be applied and implemented is significantly restricted in the case of anonymous disclosures.

A staff member intending to raise a concern should not carry out an investigation outside of the normal scope of his/her duties with a view to seeking to confirm any perceived wrongdoing.

## 9 Receiving a Disclosure

The recipient of a disclosure under this guidance and any other person to whom the disclosure is referred in the performance of that person's duties, must take all reasonable steps to avoid disclosing to another person any information that might identify the person by whom the disclosure was made.

The recipient of a disclosure should undertake an initial evaluation following which he/she will advise the discloser no later than 14 days after the receipt of the disclosure as to whether the matter requires an investigation. If the recipient is of the view that no further investigation is required, they should advise the discloser of this and advise the basis for this assessment, insofar as is possible.

In the event that the discloser is not satisfied with a decision of the recipient not to pursue the matter further he/she may, if they so wish, bring the matter to the attention of another member of management of equivalent or higher rank stating that the matter has already been considered by another manager and

outlining the reasons as to why he/she feels that the matter requires investigation.

In the event that the concerns are referred to a second recipient that person will undertake an independent evaluation of the matter following which he/she will advise the discloser and the first recipient no later than 14 days after the receipt of the disclosure as to whether a more detailed investigation is considered appropriate. A decision of a second recipient not to pursue the matter will represent a final 'internal' decision on the matter.

All persons who receive a disclosure under the 2014 Act must advise, in writing, Director of the receipt of the disclosure, the nature of the information contained in the disclosure and the decision transmitted to the discloser.

As it is not possible to know at the time whether a disclosure will subsequently be deemed protected under the Protected Disclosures Act the recipient should keep a written record of his/her actions, including timelines, under this section.

## 10 Investigation of a Disclosure

Where the recipient of a disclosure forms the view that an investigation is required, a full investigation must be immediately initiated. Depending on the nature of the disclosure, the recipient of the disclosure may decide to conduct the investigation themselves or may consider referring the matter to a senior manager for investigation if more appropriate. Advice, if required, should be taken from the member of C.S.M.T.

The initiation of an investigation must be reported to the Director by the investigating Officer within 3 working days. The investigation Officer must also advise the Director of the outcome and any recommendations arising out of any investigation.

Any investigation arising as a consequence of a disclosure will be carried out in a manner which is consistent with existing investigatory procedures which embody the principles of natural justice. The discloser will be advised of the progress and outcome of the investigation as appropriate having regard to the nature of the matters investigated, of the outcome of the investigation.

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. Without affecting the quality or depth of the investigation, all reasonable speed will be taken to bring any investigation arising from the making of a disclosure by a staff member to a conclusion as speedily as possible.

If, following the investigation into the matter, no wrongdoing is found to have occurred and the discloser is assessed not to have had a reasonable belief in making the allegation of wrongdoing, the details of the case will be referred to the HR Manager with a view to considering whether disciplinary proceedings ought to be pursued against the person concerned.

## 11 Records

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.

Records of concerns raised, including the outcome, will be maintained for a minimum of five years after the closure of the case by the Director. These records will be maintained in a confidential and secure environment.

The Director Audit shall provide, on a quarterly basis, details of all disclosures brought to his/her attention to the Board of Management which will review all outcomes related to this guidance and report to the Board of Management on an annual basis.

A summary report on all protected disclosures will be included in the Oberstown Annual Report.

## 12 Further information /Review of Guidance

The guidance will be reviewed when the Department of Public Expenditure & Reform provides guidance as outlined in Section 21 of the Act and at minimum intervals of two years or when required by the Management Advisory Committee of the Department.

The Protected Disclosures Act 2014 can be downloaded at:

<http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/acts/2014/a1414.pdf>



## 13 Appendices

### 14 Appendix A: Guidance for recipients of disclosures

This Appendix provides guidance for senior managers in Oberstown who are approached with disclosures alleging serious wrongdoing. The main objective of the Protected Disclosures Act 2014 ('the Act') is to protect workers from penalisation by their employer for having made a disclosure in accordance with its provisions. The Oberstown Guidance on Protected Disclosures in the Workplace ('the Guidance') reflects the provisions and intent of the legislation.

#### 14.1 Your task as the initial recipient- preliminary evaluation

Even though a person reporting serious wrongdoing to you may not wish their report to be labelled a protected disclosure, it is not possible to determine at the point of disclosure whether the officer will subsequently claim penalisation for having raised the matter.

The Guidance makes a clear distinction between an initial evaluation and a full investigation. Your evaluation will consist of two separate elements – an assessment as to whether the matters reported to you fall within the scope of the Guidance and an assessment as to whether the matters reported are sufficiently serious to merit a full blown investigation.

The Guidance mirrors the matters listed as wrongdoings in the Act. They are broad and wide ranging in nature and are all considered serious matters. In many cases, there is no requirement for an actual event to have occurred with just the possibility of occurrence being sufficient.

Not all matters brought to your attention may merit a full blown investigation and in most cases your own experience as a senior officer will be sufficient to inform you as to whether the matter is of sufficient seriousness to merit further investigation. Examples of where an investigation may not be required include cases where the officer reporting to you does not have access to all of the relevant facts or where a simple misunderstanding has arisen.

It may be necessary for you to make some discreet queries or to consult with a fellow officer of the same grade in order to assist your evaluation (see "Your responsibilities in relation to confidentiality" below) but you must be careful not to engage in or give the impression that you are in the process of carrying out an investigation. In addition to your responsibility to the discloser, you also

have a responsibility to ensure that accusations of wrongdoing, which could potentially prove to be incorrect, are not made against innocent persons.

If you arrive at the conclusion that a full investigation is not necessary, it is nonetheless important that your evaluation is sufficiently robust to allow you to explain the basis of your decision to the person who reported to you.

#### 14.2 The issue of confidentiality

The Act and the Guidance recognise that it may not always be possible to completely protect the identity of the discloser. You do however have a responsibility to safeguard the identity of the discloser insofar as is practically and pragmatically possible. It is therefore important to ensure that any consultation you engage in as the initial recipient is carried out in a discreet and careful manner and that you take all reasonable steps to maintain the confidentiality of the identity of the person who approached you.

It is also important to note that in accordance with the Act a failure to comply with this requirement is actionable by the person by whom the disclosure was made if that person suffers any loss by reason of the failure to comply.

#### 14.3 Keeping the discloser informed

A vital element in the provision of assurance that the disclosure will be taken seriously is open and honest communication.

You should take the time and trouble to explain your role in the process as set out in the Guidance and that your initial evaluation does not involve a formal investigation. You should also make it clear that an underlying principle of the Guidance is that the discloser is not disadvantaged in any way for having made a disclosure based on a reasonable belief even if no wrongdoing is identified. This would also be an appropriate time to discuss the limits on confidentiality as set out in the legislation.

While there is a clear necessity to draw attention to the consequences of making a disclosure not based on a reasonable belief, an over emphasis on this aspect could potentially discourage persons from making reports of wrongdoing. Such an outcome would be contrary to one of the main purposes of the Guidance, which is to encourage staff to speak up about wrongdoing.

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. As a discloser has a right to a second independent opinion on the

matter, a failure on your part to adequately explain matters will inevitably lead to the matter being raised with another senior officer.

#### 14.4 Keeping the organisation informed

The Guidance requires that you formally advise others in the organisation of the fact that a disclosure of wrongdoing has been brought to your attention – see especially sections 9 & 10.

A checklist has been prepared for your guidance, which you should sign and maintain for your records. As there are no time limits set out in the Act or the Guidance it is important that you maintain your records until such time as you are satisfied that all matters connected with the disclosure have been disposed of.

## 14.5 Initial Recipient of a disclosure - Checklist

<b>Initial Recipient of a disclosure – Checklist</b>		<input checked="" type="checkbox"/>
1.	Have you read and familiarised yourself with the content of the latest version of the Oberstown Children Detention Campus Protected Disclosure Guidance.	
2.	Have you taken particular note relating to your responsibilities concerning the avoidance of the disclosure of information that might identify the person by whom the disclosure was made?	
3.	Have you given a copy of the Guidance to the discloser and advised them that their concerns will be treated seriously?	
4.	Has the discloser adequately demonstrated to you that the matters he/she is raising fall into one of the categories set out in section 5 of the Guidance?	
5.	If the answer to question number 4 is 'NO' have you advised the discloser that the subject matter of the disclosure must refer to one of the matters set out at section 5?	
6.	If the answer to question number 4 is 'YES' have you advised the discloser that you will carry out an initial evaluation and revert with an indication as to whether, in your view, the matter requires a formal investigation?	
7.	Have you explained the difference between an initial evaluation and a formal investigation?	
8.	Have you explained to the discloser that if he/she is not happy with the outcome of your evaluation he/she can refer the matter to another senior officer and that the other senior officer will conduct his/her own independent evaluation?	
9.	Have you explained that in the event of a conclusion that an investigation is required the matter will be investigated and that this may be referred to another officer for investigation if you consider this more appropriate?	
10.	Have you explained to the discloser the limits on confidentiality as set out in the Protected Disclosures legislation?	
11.	In the event that you have arrived at the view that an independent investigation is not appropriate have you advised the discloser, in so far as is possible, the basis for arriving at that conclusion?	
12.	Have you formally advised Director and Board of Management of the receipt of the disclosure, the nature of the information contained therein, the outcome of your evaluation and the name of the senior officer to whom the matter was referred for investigation, if appropriate?	

## 15 Appendix B: Guidance for investigation of disclosures

This Appendix provides guidance for Manager at Oberstown who are responsible for investigating alleged serious wrongdoing under the Protected Disclosures Act 2014 ('the Act'). The Act provides protection for workers from penalisation by their employer for having made a disclosure in accordance with its provisions. Oberstown Interim Guidance on Protected Disclosures in the Workplace ('the Guidance') reflects the provisions and intent of the legislation.

### 15.1 Your task as the investigator

Your first task is to confirm with the initial recipient of the disclosure (if this is a different person) that he/she has advised the on the Director of the receipt of the disclosure, the nature of the information contained in the disclosure and the decision transmitted to the discloser. Following that, you must advise the same individuals that the matter has been passed to you for investigation.

Insofar as you may wish to consult with the officer who may have passed the disclosure to you for investigation it is important that you arrive at your own independent conclusions in relation to the matter under investigation.

The manner in which you conduct your investigation is one for determination by you having regard to the particular circumstances of the case. This is however subject to two very important considerations:

- *The issue of confidentiality*- The Protected Disclosures Act 2014 and the Department's Guidance recognise that it may not always be possible to completely protect the identity of the discloser. You do however have a responsibility to safeguard the identity of the discloser insofar as is practically and pragmatically possible. It is therefore important to ensure that you take all reasonable steps to maintain the confidentiality of the identity of the person who made the disclosure of wrongdoing.

It is also important to note that in accordance with the legislation a failure to comply with this requirement is actionable by the person by whom the disclosure was made if that person suffers any loss by reason of the failure to comply.

- *Fair investigatory procedures*- Oberstown makes it clear that any investigation arising as a consequence of a disclosure will, as with all other internal investigations, be carried out in a manner, which is fully consistent with existing investigatory procedures, which embody the principles of natural justice. Remember that in addition to your responsibility to the discloser you also have a responsibility to ensure that

accusations of wrongdoing, which could potentially prove to be incorrect, are not made against innocent persons.

Should you require any particular guidance in relation to fair procedures it is suggested that you seek advice from the HR Unit.

### 15.2 Keeping the discloser informed

Regular communication with the discloser is a vital element in the provision of assurance that the disclosure will be taken seriously.

You should take the time and trouble to explain your role in the process as set out in the Guidance and the nature of the investigation you will undertake. You should also make it clear that an underlying principle of the Guidance is that the discloser is not disadvantaged in any way for having made a disclosure based on a reasonable belief even if no wrongdoing is identified. This would also be an appropriate time to discuss the limits on confidentiality as set out in the legislation.

While there is a clear necessity to draw attention to the consequences of making a disclosure not based on a reasonable belief, an over emphasis on this aspect could potentially discourage persons from making reports of wrongdoing. Such an outcome would be contrary to one of the main purposes of the Guidance, which is to encourage staff to speak up about wrongdoing.

If your investigation is taking some time you should provide the discloser, in so far as is possible and appropriate, with regular updates of progress.

### 15.3 Upon completion of your investigation

Regardless as to the nature of your findings, you are required under the Guidance to advise the Director and the outcome of your investigation. You also need to advise the discloser of the outcome.


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. As a discloser has, a right under the legislation to disclose the information elsewhere a failure on your part to adequately explain matters will inevitably lead to such an outcome.

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 HR

Manager who will consider whether disciplinary proceedings ought to be pursued against the person concerned.

The making of a disclosure and subsequent investigation is a serious matter. You should carefully record all of the steps you have taken during the course of your discussions with the discloser and during the course of your investigation. A checklist has been prepared for your guidance, which you should sign and maintain for your records. As there are no time limits set out in the legislation or the Guidance it is important that you maintain your records until such time as all matters connected with the disclosure have been disposed of to your satisfaction.

## 15.4 Investigation of a disclosure - Checklist

<b>Investigation of a disclosure – Checklist</b>		
1.	Have you read and familiarised yourself with the content of the latest version of the Oberstown Guidance on Protected Disclosures in the Workplace?	
2.	Have you taken particular note relating to your responsibilities concerning the avoidance of the disclosure of information that might identify the person by whom the disclosure was made?	
3.	Have you met with the discloser and advised them that their concerns will be treated seriously?	
4.	Have you confirmed with the original recipient (if this is a different person) that he/she has advised the Director of the receipt of the disclosure, the nature of the information contained therein, the outcome of his/her initial evaluation and the fact that the matter has been referred to you for investigation?	
5.	Have you advised the Head of Internal Audit, the Assistant Secretary of the Corporate and Governance Division and the Secretary General that the matter has been passed to you for investigation?	
6.	Have you advised the discloser that you are investigating the disclosure that you will keep him/her advised of the progress of the investigation as appropriate and that when your investigation is completed you will advise him/her of the outcome of that investigation?	
7.	Have you explained to the discloser the limits on confidentiality as set out in the Protected Disclosures legislation?	
8.	Have you explained to the discloser that if he/she is not happy with the outcome of your investigation that there are alternative disclosure avenues open to him/her?	
9.	Are you familiar with procedures for conducting an investigation taking account of the principles of natural justice?	
10.	Have you advised the discloser of the outcome of your investigation and explained, in as far as is possible, the reasons for your decision?	
11.	If you arrived at the conclusion that in making his/her disclosure the discloser did not have a reasonable belief in the wrongdoing, have you referred the matter to the Head of Human Resources for further attention?	
12.	Have you formally advised the Director of the Corporate Governance Division and the Secretary General of the outcome?	



