



# Policy on Protected Disclosures February 2021

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# 1. Introduction

The NCCA is committed to fostering an appropriate environment for addressing concerns relating to potential wrongdoing in the workplace and to providing the necessary support for staff to raise genuine concerns. The Protected Disclosures Act, 2014 (the “Act” or “2014 Act”) requires each public body 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 Act also requires the public body to provide written information relating to these procedures to workers.

## 2. Purpose

The purpose of this Protected Disclosures Policy is to encourage workers engaged by the NCCA to make a disclosure of wrongdoing and to provide protection for the person making the disclosure. The policy also provides a process for dealing with such protected disclosures (Appendix 3).

This Policy does not set out terms and conditions of employment and may be amended at any time by the NCCA. All workers are obliged to comply with this Policy, or any amended Policy.

## 3. Key principles

The following key principles inform this policy:

- A worker who has a reasonable belief that a relevant wrongdoing is occurring or is likely to occur, is encouraged to raise a concern to the appropriate person, in line with this policy.
- all disclosures of wrongdoing in the workplace should, as a matter of routine, be the subject of an appropriate assessment and / or investigation and the identity of the person making the disclosure should be appropriately protected
- a worker who has a reasonable belief that the information contained in his or her disclosure shows or tends to show that wrongdoing covered by the policy has occurred, is occurring or is likely to occur should be protected against penalisation even if the worker’s concern in ultimately misguided or mistaken
- The NCCA reserves the right to initiate disciplinary action<sup>1</sup> in the event that:

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<sup>1</sup> Relevant only to NCCA staff

- concerns are raised other than with the reasonable belief that they tend to show one or more relevant wrongdoings;
- any individual is victimised, bullied, harassed or penalised by a colleague for raising a genuine concern; and/or
- any worker conceals or covers up relevant wrongdoing.

## 4. Application

This policy applies to members of the NCCA's Council and all workers engaged by the NCCA. This includes any person who is working or has worked for the NCCA including individuals on Commissions, consultants, researchers, officers, agency staff, volunteers, interns and students undertaking work for the NCCA. It also applies to members of Council and all its enabling structures including boards and subject development groups.

## 5. Responsibility

Overall responsibility for this policy rests with the NCCA Council. Day-to-day responsibility for the policy rests with the Chief Executive.

The Chief Executive will be notified, by the Protected Disclosures Officer or such other relevant officer undertaking the initial screening assessment, when a disclosure is made under this policy. The Protected Disclosures Officer or such other relevant officer will provide the Chief Executive with regular updates as to the status of any investigation under this policy to include the outcome of such investigation, as appropriate and subject at all times to sections 11 and 14 of this policy. Should the Chief Executive be the subject of the disclosure, the notification above will be to the Chairperson, or other person nominated by the Council.

The NCCA Council will review the operation of the policy on an ongoing basis.

## 6. What is a protected disclosure?

A protected disclosure in the 2014 Act is a disclosure of information, which in the reasonable belief of the worker, tends to show one or more relevant wrongdoings which came to the attention of the worker in connection with the worker's employment or engagement with the NCCA and is disclosed in the manner described in the 2014 Act.

The protected disclosure should contain 'information' which tends to show wrongdoing. The ordinary meaning of disclosing 'information' is conveying facts, such as stating that a particular event occurred. This is different to simply making an allegation on the basis of a suspicion that is not founded on

something tangible.

The worker must have a reasonable belief that that the information disclosed shows, or tends to show, a relevant wrongdoing. The term 'reasonable belief' does not mean that the belief has to be correct. Workers are entitled to be mistaken in their belief, provided that their belief was based on reasonable grounds.

If a worker discloses information relating to relevant wrongdoing under this Policy, in an appropriate manner, and based on a reasonable belief, the NCCA will not penalise the worker as a result, even if the information or allegation is subsequently not confirmed by the investigation. The worker's motivation for raising a concern under this Policy is irrelevant when deciding whether or not their disclosure is one protected by the 2014 Act.

Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so.

Finally, the information must come to the attention of the worker in connection with his / her employment or engagement with the NCCA, but a disclosure of any wrongdoing which is the worker's, or the NCCA's, function to detect, investigate or prosecute does not come within the terms, or attract the protections and redress, of the 2014 Act, or this Policy.

Relevant wrongdoings for the purposes of the 2014 Act include any of the following, which have been, are being or are likely to be committed or occur:

- a criminal offence
- a failure to comply with a legal obligation (other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services)
- a miscarriage of justice
- the endangering of an individual's health or safety
- damage to the environment
- unlawful or otherwise improper use of funds
- fraudulent activity
- an act or omission that is oppressive, discriminatory, or grossly negligent or constitutes gross mismanagement; or
- Information tending to show any matter falling within any of the preceding points has been, is being, or is likely to be concealed or destroyed.

A worker should make a protected disclosure at the earliest possible time, if in their reasonable belief, any of the wrongdoings outlined above has occurred or is likely to occur.

## 7. What type of disclosure is not covered by this policy?

The aim of this policy is to assist and support workers raising concerns about relevant wrongdoings, as listed in section 6 above, that have come to their attention in connection with their employment or engagement with the NCCA.

This policy is not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures.

This policy does not cover complaints relating to a worker's own contract of employment. Grievances and related complaints should be raised in accordance with the appropriate policies. For example, a concern that there is a breach of an employee's own terms and conditions should generally be raised under the Civil Service Grievance Procedure. Similarly, a complaint that a worker is being bullied or harassed by a colleague should generally be raised under the Dignity at Work Policy. The NCCA is committed to dealing with all complaints appropriately, whether under this policy, or under other policies.

Where a protected disclosure is made during an investigation, disciplinary or other process, the making of the disclosure will not generally delay the conclusion of the investigation, disciplinary or other process. In general, those processes can be concluded while the disclosure may be dealt with separately.

This Policy aims to give effect to the obligations and provisions of the Protected Disclosures Act 2014. It does not replace any legal or disclosure requirements arising under other legislation. Where statutory requirements or procedures exist, they must be fully complied with.

## 8. Making a protected disclosure

Protected disclosures can be made to the Protected Disclosures Officer or a worker's line manager. The current Protected Disclosures Officer is Aine Armstrong Farrell.

If a worker feels unable to raise the matter with the Protected Disclosure Officer or their line manager, the protected disclosure may be raised with a Deputy CEO, the CEO or the Chair of the NCCA.

Guidance on how to make a protected disclosure may be found at Appendix 1, including details of the relevant information to include in a disclosure. Guidance for dealing with protected disclosures may be found at Appendix 2.

## 9. External disclosures

The Protected Disclosures Act, 2014 provides for a worker to make a disclosure to persons outside the NCCA in certain circumstances. Different requirements need to be met in different cases, as set out below. The following should be read in conjunction with sections six to ten of the 2014 Act which specify the circumstances in which alternative external disclosures qualify as protected disclosures under the Act. The Guidance issued by the Department of Public Expenditure makes it clear that it is preferable in most circumstances to disclose to the employer (i.e., the NCCA) in the first instance. The NCCA encourages workers to do so, with the knowledge that the NCCA will deal with such disclosures appropriately.

### **a) Other responsible person**

Where the worker reasonably believes that the relevant wrongdoing relates solely or mainly to the conduct of a person other than the worker's employer, or to something for which that other person has legal responsibility, then the worker can disclose to that other person.

### **b) A prescribed person**

Certain persons are prescribed by Statutory Instrument to receive protected disclosures ("**prescribed persons**") in relation to certain matters. A worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is a prescribed person. In the case of such a disclosure, the worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

### **c) A Minister of the Government**

Workers employed by the NCCA may make a protected disclosure to the Minister for Education.

### **d) A legal advisor**

The 2014 Act allows a protected disclosure to be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or an official of an excepted body (a body which negotiates pay and conditions with an employer but is not a trade union as defined in law).

### **e) alternative external disclosures (subject to meeting additional requirements)**

The 2014 Act also provides for other alternative external disclosures. But, if a worker decides to raise a concern externally under those other alternative external disclosure channels, additional requirements must be met for the alternative external disclosure to qualify as a protected disclosure under the 2014 Act.

The protections under the 2014 Act, reflected in this policy, will only be available if the following conditions are met in the case of an alternative external disclosure:

1. the worker must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true; AND
2. the disclosure must not be made for personal gain; AND
3. at least one of the following four conditions in 3.1 to 3.4 must be met:
  - 3.1 at the time the disclosure was made the worker reasonably believed that she/he would be penalised if she/he made the disclosure to the employer, a responsible person, a prescribed person or a minister; or
  - 3.2 where there is no relevant prescribed person, the worker reasonably believed that it was likely that evidence would be concealed or destroyed if the worker made the disclosure to the employer or responsible person; or
  - 3.3 the worker has previously made a disclosure of substantially the same information to the employer, a responsible person, a prescribed person or a minister; or
  - 3.4 the wrongdoing is of an exceptionally serious nature;

AND

4. in all these circumstances, it is reasonable for the worker to make an alternative external disclosure.

The assessment of what is reasonable takes account of, among other things, the identity of the person to whom the disclosure is made, the seriousness of the wrongdoing, whether the wrongdoing is ongoing or likely to occur in future, whether any action had been taken in cases where a previous disclosure was made and whether the worker complied with any procedures in place when making that previous disclosure.

Disclosure should normally be made to the employer, or to one of the other disclosure options listed above, before any alternative disclosure channel is used.

At any time, a decision may be taken by the NCCA to refer a concern, or any part of a concern, raised to a relevant Prescribed Person.

## 10. Protections against penalisation

Workers of the NCCA must not penalise a person who raises a concern under this policy. Such behaviour will constitute misconduct and may lead to disciplinary action, up to and including dismissal, for example under the Civil Service Disciplinary Code. If a worker believes that he/she has been penalised for making a protected disclosure, he/she should inform the Protected Disclosure Officer immediately.

Penalisation is defined in the Act as any act or omission that affects a worker to the worker's detriment and includes:



- suspension, lay-off or dismissal
- demotion or loss of opportunity for promotion
- transfer of duties, change of location of place of work, reduction in wages or change in working hours
- the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty)
- unfair treatment
- coercion, intimidation or harassment
- discrimination, disadvantage or unfair treatment
- injury, damage or loss
- threat of reprisal.

Penalisation of workers who make disclosures will not be tolerated and workers who feel that they are being subjected to adverse treatment should report the matter to immediately to management. Such reports will be investigated and appropriate action, which may include disciplinary action, will be taken against supervisors or co-workers where necessary.

## 11. Confidentiality

The NCCA will take all reasonable steps to treat disclosures made through this policy in a confidential and sensitive manner. The NCCA will protect a discloser's identity in accordance with the provisions of the 2014 Act (see section 14 below for further information).

## 12. Records

Records of protected disclosures raised, including outcomes, will be kept for a minimum of seven years after closure by Protected Disclosure Officer. These records will be maintained in a confidential and secure form that does not endanger the confidentiality of the person making the disclosure.

## 13. Anonymous disclosures

The NCCA is open to receiving anonymous disclosures from workers. Such disclosures are not excluded

from the protection of the 2014 Act. The NCCA will act on anonymous disclosures to the extent that is possible while recognising that the NCCA may be restricted in its ability to investigate the matter in the absence of the knowledge of the identity of the discloser. Workers should be aware that important elements of this policy such as providing the discloser with feedback and protecting the discloser from penalisation, may be difficult or impossible unless anonymity is lifted. It should also be noted that workers cannot obtain redress under the 2014 Act without identifying themselves.

## 14. Protection of identity

If a worker requests that the NCCA protects his/her identity by keeping his/her identity confidential, the NCCA will take all reasonable steps to adequately protect the identity of the worker who has made a protected disclosure.

Information that might identify the person by whom the protected disclosure was made may be disclosed to another person where:

- (a) The NCCA took all reasonable steps to avoid disclosure of the worker's identity.
- (b) The NCCA has a reasonable belief that the worker did not object to their identity being disclosed.
- (c) The NCCA had a reasonable belief that disclosure of the worker's identity was necessary for:
  - (i) The investigation of the wrongdoing concerned,
  - (ii) To prevent serious risk to the security of the State, public health, public safety or the environment, or
  - (iii) The prevention of crime or prosecution of a criminal offence; or
- (d) Where the disclosure is otherwise necessary in the public interest or is required by law.

Workers are prohibited from attempting to determine the identity of a worker who has made a protected disclosure and from speculating as to any such worker's identity. Where the NCCA has reasonable cause to consider that an employee has attempted to determine the identity of a worker who has made a protected disclosure or speculated as to any such individual's identity, such employee may be subject to disciplinary action, up to and including dismissal.

Workers who are concerned that their identity is not being protected should notify the Protected Disclosures Officer. The NCCA will investigate such notifications and take appropriate action where necessary.

## 15. Motivation

All protected disclosures will be dealt with regardless of the worker's motivation for making the disclosure and the worker will be protected so long as he or she reasonably believes that the information disclosed tended to show a 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. In addition, disclosure of a wrongdoing does not necessarily confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing.

## 16. Protection of the rights of respondents

Where an allegation is made against an NCCA worker, the principles of natural justice and fair procedures will apply. Respondents will be made aware of the details of any allegations made against them in so far as is possible having regard to the requirements of confidentiality and the requirements related to the protection of identity contained in the Act. Respondents will be given the opportunity, as part of a full investigation, to put forward their case in response to any allegation. Reasonable steps will be taken to protect the confidentiality of those who are the subject of allegations in a protected disclosure pending the outcome of an investigation. Respondents will be entitled to be accompanied by a colleague or staff representative should it be found necessary to interview the respondents during the course of an investigation.

# Appendix 1

## Guidance on how to make a protected disclosure

Any worker who has a reasonable belief that a serious wrongdoing has occurred or is about to occur should raise his/her concern with the Protected Disclosures Officer or their line manager, in writing, in the first instance. Where possible, the form below should be used for raising a concern under this policy.

This form may be submitted anonymously by way of [insert detail re: portal]. Please refer to the guidance at section 13 of the Policy for further detail on disclosures made anonymously.

### Protected Disclosures Reporting Form<sup>2</sup>

The NCCA welcomes workers making protected disclosures by using this Policy. While disclosures can be made verbally, where possible, this form should be used for making a protected disclosure. Before completing this form, a worker should:

1. Consider whether what is being disclosed is a protected disclosure and whether the NCCA's Protected Disclosures Policy ("the Policy") is relevant and applicable or whether another policy (such as the Grievance Procedure/Dignity at Work Policy) is applicable.
2. Ensure that she/he has a reasonable belief that the information being disclosed tends to show one or more relevant wrongdoings, as set out in the Policy.

|   |  |
|---|--|
| Date of the alleged wrongdoing (if known) or date that the alleged wrongdoing commenced or was identified |  |
| Is the alleged wrongdoing still ongoing?  |  |

<sup>2</sup>This form will be made available as a dynamic form allowing expanding space for inputs.

|  |  |
|--|--|
| <p>Has the alleged wrongdoing already been disclosed? If so, to whom and when and what action (if any) was taken?</p>  |  |
| <p>Please provide full details of the alleged wrongdoing and any supporting information/documentation.</p>   |  |
| <p>Please provide details of the name of the individual(s) allegedly involved in the alleged wrongdoing (if known and if the discloser considers that naming any such individual(s) is necessary to expose the alleged wrongdoing).</p>  |  |
| <p><b>Please provide details of any other information which may be relevant.</b></p>   |  |
| <p><b>OPTIONAL INFORMATION</b> – <i>You are not required to provide the below information if you wish to submit your disclosure anonymously. The NCCA will act on anonymous disclosures to the extent that is possible. However, you should note that NCCA may be restricted in its ability to investigate the matter in the absence of the knowledge of the identity of the discloser. In addition, important elements of this policy, such as providing feedback to the discloser and protecting the discloser from penalisation, may be difficult or impossible unless anonymity is lifted and workers cannot obtain redress under the 2014 Act without identifying themselves.</i></p> |  |
| <p>Name of the worker making the disclosure (“the worker”)</p>   |  |
| <p>Position of the worker</p>  |  |
| <p>Place of work</p>   |  |
| <p>Confidential contact information of the worker</p>  |  |

# Appendix 2

## Process for dealing with a protected disclosure

### 1. Initial receipt

A recipient of a disclosure should:

- Keep a record of the disclosure
- Contact the Protected Disclosures Officer, who can provide advice and assistance.
- Should the Protected Disclosures Officer be the subject of the protected disclosure, or should it be otherwise inappropriate to notify them, the matter may be notified to a Deputy CEO.
- Should it be inappropriate to notify the Protected Disclosures Officer or a Deputy CEO, the matter may be notified to the CEO.
- The Chairperson should be notified in circumstances where the Chief Executive is the subject of the disclosure.

All reported disclosures about perceived wrongdoing in the workplace must be treated seriously.

### 2. Logging the disclosure

A confidential log of disclosures will be maintained. This will generally be maintained by the Protected Disclosures Officer, save for circumstances where a conflict arises and, in such cases, one of the officers named above should be notified of the disclosure and will take responsibility to log the disclosure.

### 3. Initial screening assessment

An initial examination will take place involving a screening assessment to determine whether or not the disclosure should be treated as a protected disclosure having regard to the 2014 Act. This process will generally be undertaken by the Protected Disclosures Officer, save for circumstances where a conflict arises and, in such cases, one of the officers named above will undertake the initial screening assessment (referred to here as the relevant officer).

As part of the assessment, the Protected Disclosures Officer/relevant officer will consider whether the alleged wrongdoing is serious or minor, whether an investigation is warranted and what steps should be taken as part of that investigation. Appropriate written feedback will be provided to the discloser (except in the case of an anonymous disclosure) within reasonable timeframes.

It may be necessary, as part of the screening process, to differentiate between protected disclosures and personal complaints. For example, where the information provided relates to a personal complaint and a protected disclosure, it will be necessary to separate the different elements of the complaint or disclosure and determine whether specific information relating to a relevant wrongdoing is disclosed.

The Protected Disclosures Officer/relevant officer will convey the basis for a decision to proceed or not to proceed to investigation to the discloser. If the discloser is dissatisfied with this decision, he or she may request a review of the initial assessment, via the recipient, within 14 days of having received the decision (see 5 below).

## 4. Investigation

The Protected Disclosures Officer/relevant officer should consider the nature and extent of the investigation required (if any). This could consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoings or an external investigation by professional experts or another body. In some cases, the matter may need to be reported to, and investigated by, An Garda Síochána or another body with statutory power and function of investigation of particular matters. An investigation may not be necessary in certain circumstances. For example, where the worker raising the concern does not have access to all of the relevant facts or where a simple misunderstanding has arisen.

The Protected Disclosures Officer/relevant officer will inform the discloser of the basis of the decision to investigate the matter and the nature of the investigation. The Protected Disclosures Officer/relevant officer will also provide updates on the progress and outcomes of the investigation as appropriate having regard to the matters under investigation. It is not possible to lay down precise timescales or steps required in an investigation, as this will depend on the nature of the issues disclosed.

Where an allegation is made against an NCCA worker, the principles of natural justice and fair procedures should be complied with, as appropriate.

## 5. Confidentiality / protection of identity

The 2014 Act recognises that it may not always be possible to completely protect the identity of the discloser. The NCCA, however, has a responsibility to safeguard the identity of the discloser insofar as is practically and pragmatically possible. It is therefore important to ensure that any investigation is carried out in a discreet and careful manner and that all reasonable steps are taken to maintain the confidentiality of the identity of the discloser. If it is necessary to reveal the worker's identity to undertake an effective enquiry, the relevant officer should first consult with the worker.

It is important to note that in accordance with the 2014 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.

Where it is decided that it is necessary to disclose information that may or will identify the discloser, the discloser will be informed of this decision in advance of the disclosure, except in exceptional circumstances. Please refer to section 13 of the policy for further information.

## 6. Feedback to the discloser

The overriding requirement when providing feedback to a discloser 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).

Subject to the preceding paragraph, disclosers should be provided with periodic feedback in relation to the matters disclosed and be advised when consideration of the disclosure is complete. This does not require the NCCA to provide the discloser with a complete account of what the situation is at a particular point in time in terms of progress, but disclosers should generally be given reassurance and affirmation that the matter is receiving attention.

Any information or feedback should be provided in confidence. There is 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 occasioned by a protected disclosure. Such information is confidential between the NCCA and the worker who is the subject of a disciplinary process. A discloser should be informed that appropriate action has been taken but is not generally entitled to know what that action was.

## 7. Review

A review officer or Group, nominated by the CEO, as appropriate, and comprising not more than three staff members at the grade of Assistant Principal or above who have not been involved in the initial assessment, investigation or decision, will be convened where necessary to carry out reviews in respect of the following:

### **a) A decision not to proceed to investigation**

The group will review the initial assessment and a decision not to proceed to investigation. The outcome will be either:

agreement with the decision not to proceed with the investigation

or

disagreement with the decision of the recipient and either referring the disclosure back for investigation by the recipient or if appropriate to nominate a new investigating officer.

### **b) The outcome of any assessment or investigation undertaken in respect of the protected disclosure**

### **c) A decision to made to disclose the identity of the discloser**

Where a decision is taken to disclose the identity of the discloser, where at all possible, the discloser



should be offered a review before his / her identity is disclosed.

**d) The outcome of any assessment or investigation in respect of any complaint of penalisation.**

The outcome of any examination by the Review Group will represent a final internal decision on the matter.

## 8. Records

Records of protected disclosures raised, including outcomes, will be kept for a minimum of seven years after closure by the Protected Disclosure Officer. These records will be maintained in a confidential and secure form that does not endanger the confidentiality of the person making the disclosure.

## 9. Support and advice

A worker<sup>3</sup> who has made a disclosure of wrongdoing and requires additional support may wish to contact the Civil Service Employee Assistance Service (CSEAS).

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<sup>3</sup> Relevant only to NCCA staff