

Higher Education Authority

PROCEDURES for STAFF MAKING PROTECTED DISCLOSURES UNDER SI 339 of 2014

1. WHAT IS A PROTECTED DISCLOSURE?

- 1.1 Making a protected disclosure refers to a situation where a worker discloses information in relation to wrongdoing. This is sometimes referred to as “whistleblowing”. For the purposes of these Procedures such a worker is referred to as a “worker” or “discloser” and disclosing information in relation to alleged wrongdoing in accordance with the Protected Disclosures Act 2014 (the 2014 Act) is referred to as “making a disclosure”.
- 1.2 The 2014 Act provides specific remedies for workers who are penalised for making a disclosure in the public interest and for connected purposes. For the purpose of these Procedures the term “penalisation” includes dismissal and causing detriment to a worker. A person to whom a disclosure is made must also take reasonable steps to protect the identity of the discloser. The 2014 Act provides significant forms of redress for penalisation and also allows a claim for loss suffered as a result of a failure to protect a discloser’s identity.
- 1.3 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 prescribed under SI 339. However, the 2014 Act also provides an additional requirement in this case. The worker *must* believe that the information disclosed, and any allegation contained in it, are substantially true.
- 1.4 These procedures have been prepared for staff of Higher Education Institutions who make disclosures in accordance with S.I. 339 of 2014. A person making a protected disclosure may also wish to refer to the guidelines which have been prepared by their own particular institution or guidelines which the HEA has prepared for its own employees. These can be made available by contacting info@hea.ie.

2. APPLICATION OF STATUTORY INSTRUMENT 339 OF 2014

- 2.1 The following is a link to SI 339 of 2014
<http://www.irishstatutebook.ie/eli/2014/si/339/made/en/print>

The relevant provisions as they apply to the HEA are as follows;

“Each person specified in column (2) of the schedule is hereby 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

Chief Executive of the Higher Education Authority	(a) All matters relating to the planning and development of higher education and research in the State.
	(b) All matters relating to funding for universities and certain institutions of higher education designated under the <u>Higher Education Authority Act 1971</u> (No. 22 of 1971).

- 2.2 Protected disclosures may be made to the Chief Executive of the HEA from workers in the following institutions;

National University of Ireland

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University College, Dublin
University College, Cork
NUI, Galway and St. Angela's College
Maynooth University
University of Dublin, Trinity College
University of Limerick and Mary Immaculate College
Dublin City University, St. Patrick's College, Drumcondra and Mater Dei Institute
National College of Art and Design
Royal Irish Academy
Royal College of Surgeons
Athlone Institute of Technology
Cork Institute of Technology
Dublin Institute of Technology
Dun Laoghaire Institute of Art and Design
Dundalk Institute of Technology
Galway-Mayo Institute of Technology
Institute of Technology, Blanchardstown
Institute of Technology, Carlow
Institute of Technology, Sligo
Institute of Technology, Tallaght
Institute of Technology, Tralee
Letterkenny Institute of Technology
Limerick Institute of Technology
Waterford Institute of Technology

- 2.3 SI 339 of 2014 identifies certain wrongdoings pertaining to the planning, development and funding of universities and HEA designated institutions. The following is a list of areas which are deemed to be covered by SI 339;

Receipt of grants from HEA, other state bodies and private donators
Receipt of research funding from HEA, other state bodies and private donators
Procurement
Travel and Subsistence
Banking and investment activities
Payroll including statutory deductions
Tax compliance
Financial statements
Purchase of lands and buildings
Planning and design of new/existing buildings
Furniture and fittings of new/existing buildings

Where a HEI employee is unsure whether a matter falls within the scope of these procedures (s)he may in confidence contact the Chief Executive in advance of making a formal disclosure.

Relevant Wrongdoing

- 2.4 Section 5 of the 2014 Act provides protection for workers who disclose information in relation to the following wrongdoings:

(a) The commission of an offence;

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- (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.

2.5 It is immaterial whether a relevant wrongdoing occurred, occurs or would occur in Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other country or territory.

3. PURPOSE OF PROCEDURES AND HEA COMMITMENT

3.1 These Procedures sets out the process by which a worker in an institution outlined in paragraph 2.2 can make a disclosure under a ground outlined in paragraph 2.3, what will happen when a disclosure is made and what the HEA will do to protect a discloser.

3.2 The Board of the HEA is committed to the following:

- (a) Facilitating the disclosure of wrongdoing in a University/institution designated under the HEA Act, 1971 in accordance with the Protected Disclosures Act 2014 and SI 339 of 2014;
- (b) Encouraging workers to make protected disclosures at the earliest possible opportunity;
- (c) Providing workers with guidance as to how to make protected disclosures;
- (d) Assisting, supporting and protecting workers who make protected disclosures;
- (e) Protecting a worker's identity in a manner consistent with the requirements of the 2014 Act and taking action where those requirements have been breached;
- (f) Assessing any disclosure made, conducting an investigation, where warranted, and addressing all findings that require attention;

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4. ACTION TO BE UNDERTAKEN BY HEA

4.1 The CEO upon receipt of a protected disclosure shall assign the matter to the Head of System Funding or another senior manager in the HEA. A disclosure should contain “information” which tends to show wrongdoing. 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, for example, that a law is being breached.

The person assigned responsibility for the matter shall in the first instance assess the following;

- That the disclosure has been received from a worker employed in an institution listed in paragraph 2.2
- That the disclosure pertains to a matter outlined in paragraph 2.3.
- Satisfy him/herself that all investigations within the HEI concerned have been completed. When making a protected disclosure to the HEA, the worker employed in the institution should ensure and provide confirmation to the HEA that he/she has fully exhausted all relevant internal HEI policies, including the HEI’s own protected disclosure policy.

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If the above criteria are not met, the person will be informed within 7 days that this cannot be considered under the Protected Disclosure legislation. If there remains merit in the HEA examining the issues raised further, the HEA will ask the person if he/she is willing to make a submission without the protection of the Protected Disclosure legislation. Subject to the above criteria being met the HEA will undertake the following;

- Review all material presented by the person presented by the protected disclosure and determine whether further clarification is required from that person.
- If a meeting is requested by the person making the disclosure, or if the person agrees to a meeting with the HEA to provide further clarification sought, this should be facilitated with two HEA members of staff attending. Full notes of the meeting should be taken and agreed with the person, and this document may form part of the disclosure with his/her approval.
- The HEA will then send the Protected Disclosure to the relevant institution, requesting the institution to outline in writing how the protected disclosure has been investigated, how the independence and robustness of this process has been assured, the outcome of these investigations and actions undertaken arising from the investigation. This correspondence will be directed to the President/Provost of the relevant institution, unless that person is the subject of any aspect of the disclosure. In that case, the correspondence will be addressed to the Chair of the institution audit committee.
- The HEA Manager assigned shall review the written material received from the institution and consider this against the disclosure made. If necessary, meetings with representatives from the institution concerned will be arranged to provide further clarification.

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- If, following receipt of the response from the institution, the HEA feels that further information is required from the person making the disclosure, this will be sought either in writing or via a follow-up meeting.
- The HEA commits to issuing its response to a protected disclosure within 20 days of receipt of all necessary information. This deadline may be extended if further investigations need to be carried out following consultation with, and agreement of the institution concerned. In such circumstances the person who made the protected disclosure will be advised.
- If the HEA does not receive a satisfactory response from the institution regarding the matters set out in the disclosure, it will consider recommending to the Minister for Education and Skills the appointment of a Visitor (in the case of Universities) or an Inspector (in the case of IoTs) to conduct an independent review of the issues.
- The HEA will report publicly on an annual basis the number of protected disclosures made with regard to HEIs, the processes followed in each case and the outcomes from each process.

5. POWERS OF THE HEA TO UNDERTAKE INVESTIGATIONS

The powers of the HEA to undertake investigations are limited by legislation.

S. 11 of the Higher Education Authority Act, 1971 states;

An institution of higher education shall supply to An tÚdarás all such information relative to the Institution as An tÚdarás may require for the performance of its duties.

The carrying out of investigations in Universities is a matter for the Minister for Education and Skills in accordance with the provisions of S. 20 of the Universities Act, 1997.

20.—(1) Where the Minister is of the opinion that there are reasonable grounds for contending that the functions of a university are being performed in a manner which prima facie constitutes a breach of the laws, statutes or ordinances applicable to the university, the Minister may, after first advising the governing authority of his or her opinion and considering any explanation given in response, and with the concurrence of the Government, request the Visitor to the university to inquire into any matter giving rise to the Minister's opinion.

(2) If the Visitor is satisfied that there are reasonable grounds for the Minister's opinion, the Visitor shall inquire into the matters giving rise to that opinion and any related matter and report to the Minister on the results of the inquiry.

(3) A Visitor shall, for the purposes of this section, be entitled at all reasonable times to enter a university to inquire into the academic or other affairs of the university or to conduct an inspection of the university and its buildings, equipment and records where the inspection is, in the opinion of the Visitor, relevant to his or her inquiries.

(4) A Visitor shall be afforded all reasonable co-operation and facility by the university, its employees and its governing authority, including access to such buildings, equipment and records as the Visitor may require, to enable the Visitor to perform his or her functions under this section.

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The process in the Institutes of Technology Act is set out in S. 20 and S. 46 of the Institutes of Technology Act, 2006. Section 20 amends the RTC Act, 1992 as amended and section 46 amends the DIT Act, 1992 as amended. Section 20 states

20.— The Minister, following consultation with An tÚdarás, may authorise any person or persons as the Minister may deem appropriate to report to the Minister on any matters regarding the operation of a college and such person or persons shall be entitled at all reasonable times to enter the college concerned and shall be afforded every facility by that college, including access to all records, to perform their functions.

6. PROTECTED DISCLOSURES: GUIDANCE ON TERMINOLOGY

6.1 A protected disclosure is defined in the 2014 Act as 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 and is disclosed in the manner prescribed in the Act.

6.2 Relevant wrongdoing

Section 5 of the 2014 Act provides protection for workers who disclose information in relation to the following wrongdoings:

- (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.

It is immaterial whether a relevant wrongdoing occurred, occurs or would occur in Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other country or territory.

6.3 Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. All workers need to do, and should do, is disclose

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the information that they have, based on a reasonable belief that it discloses a wrongdoing. Workers should also be satisfied that the information is necessary to disclose that wrongdoing and should not access, process, disclose or seek to disclose information about individuals that is not necessary for the purpose of disclosing the wrongdoing.

6.4 Reasonable belief

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 prescribed under SI 339. *However, the 2014 Act also provides an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, are substantially true.*

A worker must have a reasonable belief that the information disclosed tends to show a wrongdoing. The term “reasonable belief” does not mean that the belief has to be correct. A worker is entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.

It may be quite reasonable for a worker to believe that a wrongdoing is occurring on the basis of what he or she observes. A worker may not know all the facts of the case and as noted above in section 6.3, the worker is not obliged to find proof of their suspicion. In such a case the worker may have reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the worker was mistaken.

The Act states that no worker will be penalised simply for getting it wrong, so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

6.5 In connection with their employment

The information must come to the attention of the worker in connection with their employment, but a disclosure of any wrongdoing which is the worker’s, or the worker’s employer’s, function to detect, investigate or prosecute does not come within the terms, or attract the protections and redress, of the 2014 Act.