

HEA

An tÚdarás um Ard-Oideachas
The Higher Education Authority

**External Procedures for
Making a Protected
Disclosure to the
Chief Executive Officer of
the Higher Education
Authority**

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External Procedures for Making a Protected Disclosure to the Chief Executive Officer of the Higher Education Authority

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Please note this is a living document which will be updated as required.

1 Introduction

This document sets out the external reporting procedures for workers who wish to make a disclosure to the Chief Executive Officer (“CEO”) of the Higher Education Authority (“HEA”), as a prescribed person, in accordance with the provisions of the Protected Disclosures Act 2014 as amended (“Act”) and Statutory Instrument (S.I.) 367/2020, in relation to: a) the planning and development of higher education and research in the State; or b) the funding for universities and certain designated institutions of higher education.

2 Policy Statement and Commitment of Management to Procedures

The HEA is committed to maintaining the highest standards of honesty, integrity, transparency, and accountability in the higher education sector. These standards will be achieved through, amongst other mechanisms, the implementation of robust procedures designed to encourage and facilitate the disclosure of wrongdoing and the protection of workers who make protected disclosures.

The objective of these procedures is to facilitate workers who wish to do so to make disclosures about possible wrongdoings that fall under the description of matters in respect of which the CEO of the HEA is prescribed under S.I. 367/2020, so that these concerns can be investigated following the principles of natural justice and addressed in a manner appropriate to the circumstances of the case.

These procedures set out how disclosures should be made to the HEA and the protections available for workers who wish to make a protected disclosure to the HEA. They are designed to ensure that all disclosures of wrongdoing will be the subject of an appropriate assessment and, where warranted, referred for an investigation, followed by appropriate actions based on the investigation findings, and that workers will be protected at all times.

The HEA is committed to the following:

- a. Protecting workers who make a report of wrongdoing and sign-posting them to available supports.
- b. Facilitating the disclosure of relevant wrongdoings in accordance with the provisions of the Act.
- c. Encouraging workers to feel confident and safe about raising concerns of relevant wrongdoings at the earliest opportunity.
- d. Providing workers with guidance as to how to make protected disclosures.
- e. Presenting independent channels and procedures for workers to make disclosures about relevant wrongdoings.
- f. Protecting a worker’s identity in a manner consistent with the requirements of the Act.
- g. Assessing any disclosure made, referring it to investigation, where warranted, and addressing all findings that require attention.
- h. Explaining the protections from detriment, penalisation, or threat of penalisation that the Act gives workers who make a protected disclosure.

3 Responsibility for Procedure Application

Overall responsibility for these procedures rests with the CEO of the HEA. Day-to-day responsibility for these procedures is delegated to the Head of System Governance. Oversight of these procedures rests with the Authority (HEA board).

When a disclosure of alleged wrongdoing is made, the CEO shall assign the matter to a Designated Person who is responsible for the reporting channel and follow up with the reporting person (see **Section 7** below). In making such an assignment, the CEO shall have regard to the nature of the matter reported including whether a matter relates to the HEA and/or members of its staff including a designated person(s). The CEO shall take account of any actual or perceived bias and any actual or perceived conflict of interest before making such an assignment.

4 Application

These procedures apply to all “workers”, as defined by section 4 of the Act. This includes any of the following who wish to report concerns about wrongdoing they have encountered in the course of their work:

- i Employees, including former employees
- ii Agency workers
- iii Contractors
- iv Trainees / persons on work experience
- v Volunteers
- vi Board members (or members of any other administrative, management or supervisory body of an undertaking)
- vii Shareholders
- viii Job applicants

For persons who do not qualify as a worker, as defined above, the appropriate procedure is the Complaints Policy of the relevant institution.

Matters which fall within the scope of the prescribed person

Under Statutory Instrument (S.I.) 367 of 2020 the Chief Executive of the HEA is prescribed to be the recipient of disclosures of relevant wrongdoings falling within the description of the following matters:

- (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 Higher Education Authority Act (the “HEA Act”).

Protected Disclosure

Only particular types of disclosure qualify for protection under the Act. A “Protected Disclosure” is a disclosure by a *worker* of *relevant information* that came to that person’s attention in a *work-related context* and, in the *reasonable belief* of the worker, tends to show one or more *relevant wrongdoings*. The information must also be disclosed in the manner prescribed by the Act.

For an external disclosure to the HEA to be protected, the worker must reasonably believe that: a) the information disclosed (and any allegation contained in it) are *substantially true*; and b) the relevant wrongdoing falls within the description of *matters in respect of which the HEA is prescribed*.

Making a Protected Disclosure is sometimes referred to as “whistleblowing”.

6 Definition of Key Terms

Worker or Reporting Person

An individual is classified as a “worker” for the purposes of the Act if they fall within one of the 8 categories set out above (see **Section 4** of these procedures) and they have acquired information about a *relevant wrongdoing* in a work-related context. A worker who communicates information about a *relevant wrongdoing* in accordance with the Act is referred to as a “reporting person” in these procedures.

Making a report or disclosure

Disclosing information in relation to alleged wrongdoing in accordance with the Act is referred to as “making a report” or “making a disclosure” in these procedures. The ordinary meaning of “disclosing information” is conveying facts, such as stating that particular events have occurred.

Relevant information

Relevant information is information which comes to the attention of a worker in a work-related context and, in the reasonable belief of the worker, tends to show one or more *relevant wrongdoings*. For a disclosure to be protected under the Act, it must convey facts - a bare allegation or an expression of concern that is based on suspicion and not founded on anything tangible will not be protected.

Please note: 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 the information that they have, based on a reasonable belief that it discloses a wrongdoing and, where the information relates to individuals, that it is necessary to disclose that information.

The responsibility for investigating and addressing any wrongdoings lies with the public body or prescribed person, not the *reporting person*.

Reasonable belief

For their disclosure to be protected, a worker must have a *reasonable belief* that the information disclosed shows, or tends to show, one or more *relevant wrongdoings* and that these fall within the description of matters in respect of which the HEA is prescribed.

The term “reasonable belief” does not mean that the belief has to be correct. Workers are entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds i.e., there was an objective basis for holding that belief. 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 already noted above, 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. As long as a reporting person has a reasonable belief that the information they disclose shows, or tends to show, relevant wrongdoing, then they will benefit from the protections provided for by the Act.

Workers should only disclose as much information as is necessary to report the 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.

Substantially true

There is an additional requirement that must be met for an external disclosure to the HEA, in its role as a prescribed person, to be a protected disclosure. The worker must reasonably believe that the information disclosed, and any allegation contained in it, are *substantially true*.

Relevant wrongdoing

A “*relevant wrongdoing*” includes the following:

- (a) That an offence has been, is being or is likely to be committed.
- (b) That a person has failed, is failing or is likely to fail 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) That a miscarriage of justice has occurred, is occurring or is likely to occur.
- (d) That the health or safety of any individual has been, is being or is likely to be endangered.
- (e) That the environment has been, is being or is likely to be damaged.
- (f) That an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur.
- (g) That a breach of EU law has occurred, is occurring or is likely to occur.
- (h) That an act or omission by or on behalf of a public body is oppressive, discriminatory, grossly negligent or constitutes gross mismanagement.
- (i) That information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed or an attempt has been, is being or is likely to be made to conceal or destroy such information.

A protected disclosure may be about a relevant wrongdoing that:

- is happening now
- took place in the past
- is about to happen.

A matter concerning an interpersonal grievance or a breach of contract that affects a worker exclusively is not a relevant wrongdoing for the purposes of the Act. Please see the paragraphs below, in **Section 6**, on ***Protected disclosures vs personal complaints - difference between these*** for further details.

A matter is not a relevant wrongdoing if it is a matter that is the function of the worker, or the worker’s employer, to detect, investigate or prosecute (unless the relevant act or omission is committed by the worker’s employer).

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

Prescribed Person

Certain persons are prescribed by the Minister for Public Expenditure and Reform to receive protected disclosures (<https://www.gov.ie/prescribed-persons>). This includes the heads or senior officials of a range of bodies involved in the supervision or regulation of certain sectors of the economy or society. A reporting person may make a protected disclosure to a *prescribed person* if the reporting person reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the prescribed person is prescribed. A worker must also reasonably believe that the information disclosed, and any allegation contained in it, are substantially true, if their disclosure to the prescribed person is to be protected under the Act.

Matters in which the HEA CEO is prescribed

The Chief Executive of the HEA is the prescribed person to be the recipient of disclosures of relevant wrongdoings as regards all matters relating to (a) the planning and development of higher education and research in the State (b) funding for universities and certain institutions of higher education designated under the HEA Act.

Work-related context

For a worker to qualify for protection under the Act, the information that they disclose must come to their attention in a “work-related context”. A work-related context means current or past work activities through which, irrespective of the nature of these activities, the reporting person acquires information concerning a *relevant wrongdoing in the HEA’s remit*. The possibility of the reporting person being penalised for reporting information will be a factor in determining if the context in which the disclosure was made was work-related.

Other key definitions

Person Concerned

Any person referred to in the report of a disclosure as a person to whom the wrongdoing is attributed or associated with is known as a “person concerned”.

Facilitators

Persons who assist the reporting person in making a disclosure are also entitled to certain protections under the Act. These persons are referred to as “facilitators”.

Suitable Persons

The Protected Disclosures Commissioner may transmit disclosures to third parties, other than prescribed persons, who the Commissioner considers to be the most appropriate persons to follow-up on the information reported. Such persons are referred to as “suitable persons”.

Designated Person

A “designated person” is responsible for the operation of the reporting channel(s) and is responsible for receiving and following up on reports, maintaining communication with the reporting person and, where necessary, requesting further information from and providing feedback to the reporting person. See **Section 7** below.

6 Protected Disclosures

The significance of a disclosure being protected

A worker will benefit from various legal protections, including protection against retaliation by their employer, if they make a report of wrongdoing that qualifies as a protected disclosure under the Act (see **Section 8** and the paragraphs about penalisation in **Section 10** below).

The role of a prescribed person

The Act provides that protected disclosures can be made internally to a worker's employer or externally, such as to a prescribed person, if additional conditions are met. The role of a prescribed person is to provide workers with a means of making an external disclosure of relevant information to an independent body that has oversight over a particular sector, without first notifying their employer.

Additional requirements for a protected disclosure to a prescribed person

Where a worker makes an external disclosure to a prescribed person, there are additional requirements that must be met for the worker to gain the protection of the Act. Not only must the worker reasonably believe that the information disclosed tends to show relevant wrongdoing, but they must also reasonably believe that: a) the matter reported falls within the area of responsibility of the prescribed person (in this case the HEA CEO); and b) the information disclosed, and any allegation contained in it, are substantially true.

Motivation and Disciplinary Record of Discloser

The motivation for making a disclosure is deemed to be irrelevant as to whether or not it is a protected disclosure. The HEA is committed to dealing with disclosures regardless of the worker's motivation for making the disclosure. The HEA will focus on the report made (the message), as opposed to any disciplinary (or other) issues related to the person making the disclosure (the messenger).

Where a worker has made a report, whether or not that has been assessed or investigated, the worker is still required to conduct themselves professionally and to continue to carry out their duties as normal. A worker who has made a report should not take it upon themselves to assume responsibility for promoting a culture of transparency within the organisation. While all workers should subscribe to such a culture, the promotion and implementation of such measures is a matter for the Board or other governance bodies of public bodies, and senior management in the organisation.

As noted above, the worker is not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. Normal management of a worker who has made a report does not constitute penalisation. This can include the taking of disciplinary action against the worker for matters unrelated to the substance of the report.

A worker who is the subject of a pre-existing disciplinary issue or redundancy situation who makes a disclosure in line with these procedures will attract the protections under the Act and will not attract a privileged position in a redundancy situation or prevent a pre-existing disciplinary action being pursued. Therefore, where a protected disclosure is made during an investigation, disciplinary or other process, this will not affect those distinct processes, except where these may represent a form of penalisation for making a protected disclosure.

A worker will be protected for having made a disclosure in accordance with these procedures. However, a report made in the absence of a reasonable belief will not attract the protection of the Act. A disclosure of

a wrongdoing does not confer protection or immunity on a worker in relation to any involvement that he/she may have had in that wrongdoing.

It is a criminal offence under the Act to make a report containing information that a worker/reporting person knows to be false. A person who suffers damage resulting from the reporting person knowingly reported false information, has a right of action in tort against the reporting person.

Protected disclosures vs personal complaints - difference between these

These procedures apply to disclosures of “relevant wrongdoings” as defined under the Act and that falls within the description of matters in respect of which the HEA is prescribed. Disclosures that do not meet these requirements are excluded from these procedures.

These procedures are not intended to act as a substitute for normal day to day operational reporting or other internal employment policies.

A personal concern, for example a grievance that affects a worker exclusively would not be regarded as a protected disclosure and would be more appropriately processed under the worker’s employer’s internal Grievance Policy or the Dignity at Work Policy. Examples of such grievances may be a matter that is specific to a worker around:

- Their own contract of employment, duties, terms, and conditions, working procedures or working conditions
- Interpersonal grievances/conflicts with another worker
- A matter concerning a complaint by a person about his or her employer which concerns the worker exclusively

These matters shall not be a relevant wrongdoing for the purposes of these procedures and may be dealt with through any agreed procedures applicable to such grievances or complaint to which the reporting person has access or such other procedures.

Options for other methods of disclosure (internally, other external methods)

Apart from a disclosure to a Prescribed Person, the Act sets out options for other methods by which a worker may make a disclosure in certain circumstances. Different requirements need to be met in different cases, as set out below.

(a) Internal Disclosures

Section 6 of the Act provides that a reporting person may make a disclosure to their employer. This is referred to as “internal reporting”. Where the employer has set up a formal channel and procedures for their employees to make disclosures, this is referred to as an “internal reporting channel”.

The HEA encourages all workers to make disclosures internally to their employer and to use the internal Protected Disclosure Procedures. Such disclosures will be taken seriously and the worker making a protected disclosure will receive appropriate protection. This enables the organisation to identify and address any wrongdoing as quickly as possible. It also enables the organisation to protect the worker from any potential penalisation which could arise because of a disclosure.

Support and Advice

Workers are encouraged to seek independent advice before and after they make a report of wrongdoing.

Workers who want to make a protected disclosure may wish to contact Transparency International Ireland, which operates a confidential free-phone service (*The Speak Up helpline*) for anyone considering reporting a concern or making a protected disclosure. The Speak Up helpline operates from 10am to 6pm Monday to Friday.

Contact details: **Freephone:** 1800 844 866

Email: helpline@transparency.ie or via encrypted email to trachelpdesk@hushmail.com.

Website: www.speakup.ie [Speak Up Safely Guide](#)

For a disclosure of relevant information made via an internal reporting channel to an employer to qualify as a protected disclosure under the Act, the following conditions must be met:

- (a) the relevant information came to the worker's attention in a work-related context; and
- (b) the worker has a reasonable belief that the information tends to show relevant wrongdoing.

(b) External Disclosures

Where a reporting person makes a disclosure under Section 7 of the Act to a prescribed person or the Protected Disclosures Commissioner (the "Commissioner"), this is referred to as "external reporting".

Prescribed Persons

Section 7 of the Act provides that a reporting person may make a disclosure to a person designated by the Minister for Public Expenditure and Reform. Such persons – most of whom are the heads of statutory regulatory or supervisory authorities – are referred to as "prescribed persons". A list of Prescribed Persons may be found at the following address: <https://www.gov.ie/prescribed-persons>. As set out above, the HEA CEO is one such designated person.

If the HEA determines that a report that it has received does not fall within the remit of the HEA CEO as a prescribed person but may fall within the description of matters in respect of which another person is prescribed, the matter will be referred to that prescribed person or where there is no such other prescribed person, the Protected Disclosures Commissioner.

For a disclosure of relevant information made to the HEA CEO (in their capacity as a prescribed person) to qualify as a protected disclosure under the Act, the following conditions must be met:

- (a) the relevant information came to the worker's attention in a work-related context;
- (b) the worker has a reasonable belief that the information tends to show relevant wrongdoing;
- (c) the worker has a reasonable belief that the relevant wrongdoing falls within the matters in respect of which the HEA CEO is prescribed i.e., they relate to:
 - (i) the planning and development of higher education and research in the State; or
 - (ii) the funding for universities and certain designated institutions of higher education; and
- (d) the worker has a reasonable belief that the information disclosed, and any allegation contained in it, are substantially true.

A Minister of the Government

If a worker is or was employed in a public body, then under Section 8 of the Act they may make a disclosure of relevant information to a relevant minister, which in the case of the higher education sector is the Minister for Further and Higher Education, Research, Innovation and Science. See: www.gov.ie/dfheris/. For such a disclosure to be protected under the Act, the following conditions must be met:

- (a) the relevant information came to the worker's attention in a work-related context;
- (b) the worker has a reasonable belief that the information tends to show relevant wrongdoing;
- (c) the worker is or was employed in a public body; and
- (d) at least one of the following conditions is met:
 - (i) the worker has reported internally or externally (or both) but they have not been provided with feedback or, if they have received feedback, the worker reasonably believes that there has been inadequate follow-up action;
 - (ii) the worker reasonably believes that the head of the public body concerned is complicit in the relevant wrongdoing; or
 - (iii) the worker reasonably believes that the relevant wrongdoing may constitute an imminent or manifest danger to the public interest.

The Office of the Protected Disclosures Commissioner

The Protected Disclosures (Amendment) Act 2022 provides for the establishment of the Office of the Protected Disclosures Commissioner (the "Commissioner"), within the Office of the Ombudsman www.ombudsman.ie. The Commissioner will receive and redirect to the most suitable authority, protected disclosures made, orally or in writing, to prescribed persons and to Ministers and will effectively act as recipient of last resort in respect of certain reports, i.e. where no prescribed person or other suitable person can be identified. This Office will become operational when the new legislation commences on 1 January 2023.

For a disclosure of relevant information to the Commissioner to be protected under the Act, the following conditions must be met:

- (a) the relevant information came to the worker's attention in a work-related context;
- (b) the worker has a reasonable belief that the information tends to show relevant wrongdoing; and
- (c) the worker has a reasonable belief that the information disclosed, and any allegation contained in it, are substantially true.

A legal adviser

The Act provides that a disclosure of relevant information will be protected if it is made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body.

Alternative external disclosures (in very limited circumstances)

It is preferable in most circumstances to disclose to the employer and, if that is not appropriate, to Prescribed Person or one of the other external disclosure options set out above. It will rarely be appropriate to make alternative external disclosures where the disclosure could be dealt with through one of these options.

There are stringent requirements for alternative external disclosures to qualify as protected disclosures under section 10 of the Act. The following conditions must be met for such a disclosure of relevant information to be protected:

- (a) the relevant information came to the worker's attention in a work-related context;
- (b) the worker has a reasonable belief that the information tends to show relevant wrongdoing;
- (c) the worker has a reasonable belief that the information disclosed, and any allegation contained in it, are substantially true; and
- (d) the worker:
 - (i) has reported internally or externally (or both) but appropriate action was not taken in response to the report within the applicable time limits set out in the Act; or
 - (ii) reasonably believes that:
 - (I) the relevant wrongdoing may constitute an imminent or manifest danger to the public interest; or
 - (II) if he or she were to make a report to a prescribed person, the Commissioner, or the relevant Minister, in accordance with Sections 7 and 8 of the Act, then:
 - (A) there is a risk of penalisation; or
 - (B) there is a low prospect of the relevant wrongdoing being effectively addressed, due to the particular circumstances of the case e.g., where evidence may be concealed or destroyed or where a prescribed person may be in collusion with the perpetrator of the wrongdoing or involved in the wrongdoing.

7 Making a Disclosure to the HEA

What it means to make a protected disclosure - a report must be made in the manner set out by the Act to gain protections

A worker must make a disclosure in the manner set out in the Act to gain the protections of the Act (see **Section 6** above for the conditions that must be met for a disclosure of relevant information to a prescribed person to be protected).

Under the Act, protected disclosures can be made internally or externally. In most circumstances it is preferable to make an internal disclosure and the HEA encourages workers to use internal channels to make a disclosure.

Workers should be aware that higher standards apply when the protected disclosure is made externally, such as to a prescribed person.

Disclosures of relevant information may be made to the Chief Executive of the HEA in respect of matters relating to the planning and development of higher education and research in the State and matters relating to funding for universities and certain institutions of higher education designated under the Higher Education Authority Act (see **Section 6** above).

Under the Act, a worker is not obliged to make a protected disclosure but nor are they absolved any from mandatory obligations to report that may be contained in other legislation.

How to make disclosure to prescribed person – in writing and orally / in person

Disclosures may be made verbally, electronically or in writing. Written disclosures are preferable as there is less scope for misunderstanding. If a disclosure is made orally/in person, the recipient will keep a written record of the conversation and where practicable, the discloser will be asked to confirm the information provided to avoid a dispute at a later date in relation to the information disclosed. Where feasible, the worker

will be provided with a copy of the written record of the verbal disclosure. If a disclosure is made by telephone, the calls are not automatically recorded.

The HEA will, on request, facilitate a physical meeting between the reporting person and the designated person for the purposes of making the report.

Postal address / email address / phone number

A disclosure by post should be addressed to the Chief Executive Officer (CEO) at the following address:

Postal address:

Chief Executive Officer
Higher Education Authority
3 Shelbourne Buildings
Crampton Avenue
Shelbourne Road
Dublin 4
D04 C2Y6

The HEA also a dedicated email address and a dedicated dial in phone number to receive protected disclosures:

Email: protecteddisclosures@hea.ie

Dedicated Dial In (DDI): +353 1231 5008 (to secure, recorded voicemail, subsequent telephone conversations are not recorded).

Designated Person

In accordance with the Act, an impartial, designated person or persons must be appointed by the prescribed person.

In making such an appointment, the CEO shall have regard to the nature of the matter reported including whether a matter relates to the HEA and/or members of its staff including a designated person(s). The CEO shall take account of any actual or perceived bias and any actual or perceived conflict of interest before making such an appointment.

The designated person is responsible for providing information on making an external disclosure, receiving, and following up on reports, maintaining communication with the reporting person and where necessary, requesting further information from and providing feedback to the reporting person.

There are three designated persons for the HEA who are three senior members of staff in the System Governance section.

Email: protecteddisclosures@hea.ie

DDI: +353 1231 5008

What information should be contained in a report

Please see **Appendix A** for the **Protected Disclosures Reporting Form** that can be used for making a report to the HEA. The form identifies the categories of information that should be included in the disclosure.

If the disclosure is made in writing, the worker should provide the background and history of the concern, giving relevant details, insofar as is possible, such as dates, the sequence of events and a description of the circumstances. The detail of the disclosure should be sufficient to enable a person without prior knowledge to understand the issue.

Disclosers are encouraged to frame their disclosure in terms of information that has come to their attention rather than seeking to draw conclusions about particular individuals or specific offences. The earlier a disclosure is made the better the prospect of it being dealt with promptly.

8 Protection of Identity

Obligations to protect identity of reporting person

The Act imposes an obligation on recipients of disclosures to protect the identity of the worker/reporting person making the disclosure.

Measures that will be taken by the HEA to protect identity

The designated person or any other person in HEA who receives a report, cannot disclose the identity of the reporting person to anyone else (or any information that might reveal the identity of the reporting person) without the explicit consent of the reporting person, other than strictly within the provisions permitted in the Act which are explained below.

This does not include disclosure to people who the designated person reasonably considers it may be necessary to share the identity with on a 'need to know basis' for the purposes of the receipt, transmission, or follow-up of the report. This can include a member of a team involved in follow-up assessment or investigation of the report and another staff member who may have the necessary technical expertise to assist with the assessment and investigation of the report. Such other persons cannot disclose the identity of the reporting person.

All records of disclosures will be securely maintained by the HEA so as to comply with the requirements of confidentiality under the Act. Disclosures will be kept secure and in a form that:

- Ensures the completeness, integrity and confidentiality of the information concerned
- Does not endanger the confidentiality of the person making the disclosure.
- Prevents access to the information by persons other than designated persons and any other authorised members of staff.
- Allows durable storage of information to allow further investigations to be carried out.

At all times, the focus will be on the information in the disclosure rather than the identity of the worker making the disclosure.

Those within the HEA must not attempt to identify a reporting person if their identity has not been revealed to them in accordance with these procedures.

Exceptions and when identity can be disclosed

The Act allows the identity of the reporting person to be disclosed in certain prescribed circumstances even where the reporting person does not consent to their identity being disclosed. As set out by the Act, those circumstances are as follows:

- (a) The person to whom the protected disclosure was made or referred shows that he/she took all reasonable steps to avoid so disclosing any such information, but the identity has been revealed through an unforeseeable error or other unavoidable occurrence.
- (b) The person to whom the disclosure was made or transmitted had a reasonable belief that it was necessary for the prevention of serious risk to the security of the State, public health, public safety, or the environment.
- (c) Where the disclosure is otherwise required by law.
- (d) Where the disclosure is a necessary and proportionate obligation imposed by Union law or the law of the State in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned. NOTE: This relates to a statutory or criminal investigation or judicial proceedings. It does not relate to internal investigations conducted by the public body or prescribed person.

Consultation with discloser

Where it is decided that it is necessary to disclose the identity of the reporting person or other information that may or will disclose the identity of the reporting person, in the cases referred to at (b) or (d) above, the reporting person will be informed of this decision in advance of the disclosure, and the reasons for the disclosure, unless the notification would jeopardise:

- I. the effective investigation of the wrongdoing;
- II. the prevention of 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.

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

If any decision is taken that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser will be informed of this decision in writing advance of the disclosure, except in exceptional cases.

A discloser is entitled to a review of any such decision to disclose his/her identity. Please refer to **Section 11** for further information on this review process.

Complaints of a failure to protect a discloser's identity

The HEA is committed to complying with its statutory obligations to protect the identity of workers who make disclosures in accordance with these procedures. If a discloser is concerned that their identity is not being protected, this should be raised immediately.

A complaint of a breach of confidentiality under these procedures should be made to the Chief Executive of the HEA. Such notifications will be assessed and, where warranted, referred for an investigation and appropriate action taken where necessary.

Identity of the Person Concerned

Under the Act the HEA is also required to protect the identity of any person referred to in the report of a disclosure as a person to whom the wrongdoing is attributed or associated with (known as a "person concerned").

The identity of a person concerned will be protected for as long as any investigation triggered by the report is ongoing, unless disclosure of the identity is necessary for the purposes of the Act or is otherwise required by law.

9 Anonymous Disclosures

It is mandatory for prescribed persons and the Commissioner to accept and follow-up on anonymous disclosures unless there is a specific prohibition on doing so in the prescribed person's sectoral legislation.

How anonymous disclosures are treated by the HEA

There is a distinction between an anonymous disclosure (where identity is withheld by the discloser) and confidential disclosures (where identity is protected by the recipient).

Anonymous disclosures made by workers are not excluded from the protection of the 2022 Act and the HEA will act upon such disclosures to the extent that this is possible and will afford such disclosures appropriate consideration.

Where the anonymous report contains enough information to allow an initial assessment that there is prima facie evidence that a relevant wrongdoing has occurred, follow-up action will be taken by the HEA to the extent that is possible from the information provided.

Where it is possible to communicate with the reporting person (e.g., they have made their report via an anonymous email account), the HEA may seek further information from the reporting person in order to make a better initial assessment or as part of further follow-up action.

Limitations associated with anonymous disclosures

The HEA may be restricted in its ability to investigate matters raised by anonymous disclosers in the absence of the knowledge of the identity of the reporting person.

Important elements of these procedures, such as keeping the reporting person informed and protecting a reporting person from penalisation, may be difficult or impossible to apply unless the reporting person discloses their identity.

It should be noted also that a reporting person cannot obtain redress under the Act without identifying themselves as part of the process of seeking redress. Workers are advised to seek independent advice before and during making a disclosure.

10 HEA Process once a report of a disclosure is received

Acknowledgement

The HEA will acknowledge, in writing, to the reporting person, receipt of the report within **7 calendar days of its receipt**. There are two exceptions to this:

1. The reporting person has requested otherwise; or
2. The HEA reasonably believes acknowledgement of the receipt would jeopardise the protection of the identity of the reporting person.

The acknowledgement will provide the following:

- Information on the protected disclosures process, enclosing a copy of the HEA procedures that will apply to the handling of the report.
- An early indication of the expectation of what will happen after the report is made.
- Information in relation to the protection of the identity of the reporting person and protection from penalisation.
- Information in relation to the type of feedback that will be provided, as well as the type of feedback that will not be provided, and that the reporting person may request in writing further feedback at three-month intervals.

Initial Assessment – Screening Process

When a disclosure of alleged wrongdoing is made, the Chief Executive of the HEA shall assign the matter to the Designated Person(s).

The Designated Person (or delegate) will conduct a screening assessment of the disclosure to determine whether it should be treated as a protected disclosure, having regard to the Act, S.I. 369/2020 and these procedures.

If it is unclear whether the report qualifies as a protected disclosure, the designated person should treat the report as a protected disclosure (and protect the identity of the reporting person and any persons concerned, in accordance with the procedures) until satisfied that the report is not a protected disclosure.

The initial assessment should involve an assessment of the report to seek to determine if there is prima facie evidence that a relevant wrongdoing may have occurred and if it should be treated as a protected disclosure, having regard to the provisions of the Act.

As well as seeking to determine whether or not a relevant wrongdoing may have occurred and if it should be treated as a protected disclosure, the initial assessment will examine whether the report falls within the scope of the matters for which the HEA has responsibility.

Potential outcomes of the assessment: options open to the HEA

The potential outcomes of an initial assessment of a report of alleged wrongdoing are as follows:

- i. If a report is deemed to relate solely to a complaint exclusively affecting the worker, then the reporting person will be encouraged to utilise other processes (for example, the grievance or dignity at work policy) so that the complaint can be dealt with in an appropriate manner and will be told that the report will not be considered under the protected disclosures procedure.
- ii. If it is assessed that there is a mix of different issues (some involving a protected disclosure, some involving a complaint exclusively affecting the worker), then an appropriate process / processes will be applied to deal with each of the issues. The process to be applied may differ from case to case.
- iii. If it is assessed that the report concerns matters not in the scope of the matters for which the HEA has responsibility, then the report will be transmitted to the relevant prescribed person, or where there is no such other prescribed person, the Commissioner.
- iv. If it is determined that there is no prima facie evidence that a relevant wrongdoing may have occurred, then the matter can be closed, and the reporting person notified.
- v. If it is determined that there is a relevant wrongdoing but that it is clearly minor and does not require further follow up, the matter will be closed.
- vi. If it is assessed that the report does not contain any meaningful new information about a relevant wrongdoing compared to a past report where the procedures have been concluded, then the matter will be closed, unless new legal or factual circumstances justify a different follow up.
- vii. It is determined that there is prima facie evidence that a relevant wrongdoing may have occurred in which case appropriate action will be taken to address the relevant wrongdoing. When determining the

- appropriate action to take, including any investigation, the HEA will have regard to the seriousness and nature of the relevant wrongdoing and the HEA's statutory powers.
- viii. Some matters may be of such seriousness that the investigation will more appropriately be carried out externally or by professional experts in a particular area. In some cases, the matter may need to be reported to, and investigated by, An Garda Síochána or another body with the statutory power and function of investigation of particular matters.
- ix. Where a report of a disclosure concerns a breach of EU law, as provided for in the Act, the prescribed person must send the information to the relevant EU bodies as soon as practicable, where this is provided for under EU or Irish law. For example, public authorities have an obligation to report all major cases of irregularities involving EU funds to OLAF, the EU's anti-fraud office.

The reporting person will be informed, as soon as practicable, if any of these outcomes arise and the reason for the decision.

Once a protected disclosure has been made in accordance with the Act, it is not possible for a reporting person to withdraw the disclosure. Reporting persons are required under the Act to co-operate with a prescribed person, the Commissioner or a person to whom a report is transmitted to such extent as may reasonably and lawfully be required for the purposes of the Act.

Where co-operation is withdrawn or the reporting person seeks to withdraw a protected disclosure, public bodies and prescribed persons are still required to comply with the provisions of the Act, to the greatest extent possible. Should the reporting person cease to cooperate with the protected disclosure process, this may make follow-up, including any investigation, more difficult.

Investigation

If the screening assessment by the HEA concludes that the matter meets the criteria of a protected disclosure and that it falls within the description of matters in respect of which the HEA is prescribed, the HEA may take such action as it deems appropriate with reference to its statutory powers under the **Higher Education Authority Act 2022** (the "HEA Act").

The HEA may need to carry out further investigation regarding the alleged relevant wrongdoing, the nature of which will depend on the circumstances. For example, the CEO of the HEA may exercise their powers under the HEA Act to: a) assess whether a funded body is compliant with its funding conditions and require it to provide information in relation to its funding; or b) require the governing body of a designated institution of higher education to carry out a review and submit a report to the CEO of the HEA.

At any stage of the process, if the HEA has serious concerns regarding the nature of the disclosure and/or is dissatisfied with the response to and/or investigation of the relevant matter by the institution, it may recommend to the Minister for Further and Higher Education, Research, Innovation and Skills the appointment of a Visitor or an Inspection, as appropriate, under the relevant legislation, to conduct an independent review of the issues under the powers provided to the Minister.

Feedback to the Discloser

Timelines

Workers who make a protected disclosure to the HEA under these procedures will be provided with feedback with 3 months after the acknowledgment of the report, provided within 7 days, in relation to their disclosure.

The requirement to provide feedback does not require a full investigation report to be provided after three months.

The maximum time to provide feedback can be extended from three months up to six months after acknowledgement of the report, where it is justified due to the particular complexity of the report

concerned. The reporting person will be informed of the decision to extend the time from three months to six months as soon as practicable

The reporting person may request in writing further feedback at three month intervals and this will be provided at three monthly intervals until the procedure relating to the report is closed.

The HEA is permitted to prioritise reports of disclosures of serious relevant wrongdoing, if necessary and appropriate, having regard to the number of reports received.

Timelines for the provision of feedback will be the same for reports which have not been prioritised.

Where a report is transmitted by the Commissioner to a prescribed person, or a report is transmitted by a prescribed person to another prescribed person (or the Commissioner), the three month or six month timeframe starts from the date the report was first made not the date of transmission.

○ *Content of Feedback*

Feedback will consist of information on the action envisaged or taken as follow-up and the reasons for such follow-up action.

This may include action taken, by the HEA or a person to whom the report is transmitted, to assess and investigate the accuracy of the information reported and, where relevant, actions taken to address the wrongdoing reported.

Any feedback given by the HEA to a reporting person is provided in confidence and should not be disclosed further by the reporting person, other than to their legal advisor or trade union representative, or unless the information forms part of a further protected disclosure being made via another channel.

No information will be communicated by the HEA 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.

Personal information relating to another worker will not be provided by the HEA, such as whether a disciplinary process has taken place and the outcome of any such process which may arise on foot of an investigation occasioned by a protected disclosure. In such a situation, a reporting person will be informed that appropriate action has been taken but is not entitled to know what that action was.

● *Communication of final outcome*

The discloser will be advised when consideration of the disclosure is complete and will be provided with information on the final outcome of any investigation triggered by their report.

The HEA will communicate in writing to the discloser the final outcome of any investigations triggered by the report of the disclosure, subject to legal restrictions applying concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation.

This does not require the provision of the full investigation report. The outcome of the investigation will be provided, subject to the above restrictions.

● *Penalisation*

The Act prohibits an employer from penalising or threatening to penalise a reporting person. It provides for specific remedies for workers who are penalised, or threatened with penalisation, by their employer for making a protected disclosure. The definition of penalisation in section 3(1) of the Act is as follows:

Penalisation means any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report, and which causes, or may cause, an unjustified detriment to a worker. A non-exhaustive list of examples of penalisation includes:

- a) Suspension, lay-off or dismissal,
- b) Demotion, loss of opportunity for promotion or withholding of promotion,
- c) Transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- d) The imposition or administering of any discipline, reprimand, or other penalty (including a financial penalty),
- e) Coercion, intimidation, harassment or ostracism,
- f) Discrimination, disadvantage or unfair treatment,
- g) Injury, Damage or Loss,
- h) Threat of Reprisal;
- i) Withholding of Training;
- j) A negative performance assessment or employment reference;
- k) Failure to convert a temporary employment contract into a permanent one where the worker had a legitimate expectation that he or she would be offered permanent employment
- l) Failure to renew or early termination of a temporary employment contract,
- m) Harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income,
- n) blacklisting 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,
- o) early termination or cancellation of a contract for goods or services,
- p) cancellation of a licence or permit, and
- q) psychiatric or medical referrals.

Penalisation of a reporting person and connected persons is a criminal offence under the Act. In addition, under S14 A of the Act it is also a criminal offence to:

- (a) hinder or attempt to hinder a worker in making a report
- (b) penalise or threaten penalisation or causes or permits any other person to penalise or threaten penalisation against any of the following:
 - i. a reporting person;
 - ii. a facilitator;
 - iii. any third person who is connected with a reporting person and who could suffer retaliation in a work-related context, including as a colleague or relative of the reporting person;
 - iv. any legal entity that a reporting person owns, works for or is otherwise connected with in a work-related context,
- (c) bring vexatious proceedings against any person or legal entity as under paragraph (b),
- (d) breach the duty of confidentiality in section 16 regarding the identity of reporting persons, or
- (e) fail to comply with the requirement establish, maintain and operate internal reporting channels and procedures.

- ***What protections will the HEA provide to disclosers***

The HEA is committed to protecting workers from acts of penalisation or detriment for having made a disclosure in line with the requirements of these procedures. Please see **Section 8** above for details of the measures that will be taken by HEA to protect the identity of a reporting person. The HEA will not subject a worker to a detriment on the grounds that they have made a report in accordance with these procedures.

• ***Option to complain internally to employer if penalisation occurs***

It is important to note that, under the Act, the obligation not to penalise or threaten penalisation against a reporting person lies with the employer. Employers are obliged to address complaints of penalisation made by reporting persons. Penalisation can be an omission as well as an act, and a failure to investigate a complaint of penalisation may constitute further penalisation.

• ***Redress available, including external redress and timelines***

External avenues of redress are available to workers who believe they have been penalised for making a protected disclosure. These include a claim before the Workplace Relations Commission and a claim for interim relief in the Circuit Court. The relevant time limits that apply are as follows:

- A penalisation claim must be submitted to the Workplace Relations Commission within 6 months of the act of penalisation.
- An application to the Circuit Court for interim relief must be made within 21 days of the last instance of penalisation.

In claims for penalisation before the [Workplace Relations Commission \(WRC\)](#) the alleged penalisation shall be deemed to have been as a result of the reporting person having made a protected disclosure unless the employer proves that the act or omission was justified on other grounds.

Workers should seek independent advice with regard to penalisation or the failure of an organisation to adequately respond to a protected disclosure.

11 Reviews of Decisions

A worker who makes a protected disclosure in accordance with these procedures may seek a review of a decision taken by the HEA if affected by any of the following processes:

- (i) The conduct or outcome of any follow-up actions (including any investigation) undertaken in respect of the protected disclosure.
- (ii) The conduct or outcome of any investigation into a complaint of penalisation.
- (iii) Any decision made to disclose the identity of the discloser (except in exceptional cases).

A request for a review should be made to the Chief Executive of the HEA.

The worker should set out the reason(s) they are seeking a review.

Depending on the type of review requested, the CEO will either appoint a person to undertake the review or refer the request for a review to another appropriate person who will then appoint a person to undertake the review.

Any review will be undertaken by a person who has not been involved in the initial assessment, investigation, or decision.

The role of the reviewer will not be to re-investigate the matter in question but to address the specific issues the applicant feels have received insufficient consideration. The reviewer will consider:

- Whether the correct procedures were followed
- In the case of an investigation, whether the terms of reference were adhered to
- Whether the conclusions/findings could or could not reasonably be drawn from the information/evidence on the balance of probability.

Where a review finds significant shortcomings or failings in the process, the CEO will consider what further action(s) may or may not need to be taken in response to the findings of the review.

The outcome of the review will be final and there will be no entitlement to further reviews of the same issue.

12 Annual Report

The HEA will provide an annual report to the Minister for Public Expenditure and Reform by 1 March in each year which will include the required reporting information in respect of the preceding calendar year.

The information required by the Minister for PER will be provided in such a way that it does not enable the identification of reporting persons or persons concerned. This information will be published online by the Minister, in aggregate form.

The HEA will also publish a report by 31 March each year in respect of the previous calendar year on the HEA website (and in any other format that may be appropriate). This report will contain the same information as required for the report to the Minister for PER and a statement confirming that the HEA has in place external reporting channels and procedures as required.

13 Data Protection

Applicable data protection law, as reflected in the HEA policy on Data Protection will be complied with in relation to personal data processed by the HEA in course of dealing with protected disclosures, including the receipt, assessment, and referral of a protected disclosure for investigation. In addition, all records of disclosures will be securely maintained and processed in accordance with the provisions and requirements of section 16 of the Act.

14 Freedom of Information

The Freedom of Information Act 2014 (the "FOI Act") has been amended by the Protected Disclosures (Amendment) Act 2022. The FOI Act does not apply to a record relating to a report made under the Act. Records concerning the HEA's general administration of its functions are subject to FOI.

15 Review of Procedures

The External Procedures for Making a Protected Disclosure to the Chief Executive Officer of the Higher Education Authority (HEA) will be reviewed every three years or, as a living document, at more frequent intervals as appropriate.

Appendix A - Form for making a report

The Higher Education Authority (HEA) welcomes the reporting of disclosures under the “**External Procedures for Making a Protected Disclosure to the Chief Executive Officer (CEO) of the Higher Education Authority (HEA)**” Before completing this form, you should:

- Consider whether the “**External Procedures for Making a Protected Disclosure to the CEO of the HEA**” are the appropriate procedures under which to report your concern.
- Ensure that the disclosure is a disclosure of relevant information, which, in your reasonable belief, tends to show one or more relevant wrongdoings; that the information came to your attention in a work related context; that you reasonably believe that the information disclosed, and any allegation contained in it, are substantially true; and that you reasonably believe that the relevant wrongdoing disclosed falls within the description of matters in respect of which the HEA is prescribed under the Protected Disclosures Act 2014 (as amended).

Protected disclosures should be submitted to the Chief Executive Officer of the HEA as outlined in **Section 7** of the “**External Procedures for Making a Protected Disclosure to the CEO of the HEA**”

Name of worker making the disclosure [Anonymous reports will be considered]	
Place of work	
Position in the organisation	
Confidential contact details Phone number: Email address:	
Date of alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified	
Is the alleged wrongdoing still ongoing	
Information in respect of the alleged wrongdoing (what is occurring / has occurred and how) and any supporting information <i>Care should be taken to only include information directly relevant to the disclosure. A worker is not required to investigate matters themselves to find proof of the wrongdoing and should not endeavour to do so.</i>	
The name of any person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to report the wrongdoing disclosed)	
Has the alleged wrongdoing already been disclosed and, if so, when, to whom and what action was taken	
Any other relevant information:	
Date:	

