

Procedures for Making a Protected Disclosure to the Higher Education Authority (HEA) under Statutory Instrument S.I. 339/2014

1 PROCEDURES STATEMENT

Introduction

1. The Higher Education Authority (“**the HEA**”) is committed to maintaining the highest standards of honesty, integrity, transparency and accountability. 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.
2. These updated procedures have been prepared for workers in Higher Education Institutions who wish to make a disclosure to the HEA in accordance with the procedures set out in the Protected Disclosures Act 2014 and as defined in Statutory Instrument 339/2014¹.
3. Making a protected disclosure refers to a situation where a worker discloses information in relation to wrongdoing. This is sometimes referred to as “whistleblowing”. The Protected Disclosures Act 2014 (“**the 2014 Act**”) provides a robust statutory framework within which workers can raise concerns regarding potential wrongdoing that have come to their attention in the workplace, in the knowledge that they can avail of significant employment and other protections if they are penalised by their employer or suffer any detriment for making such disclosures.
4. Statutory Instrument 339/2014 - Protected Disclosures Act 2014 (Section 7(2)) Order 2014 (“**S.I. 339/2014**”) prescribes certain persons for the purpose of receiving protected disclosures together with a description of matters in respect of which such persons are prescribed.

The Chief Executive of the HEA is a “prescribed person” under section 7 of 2014 Act and S.I. 339/2014.

The relevant provisions in S.I. 339/2014 as they apply to the Chief Executive of the HEA are that the CEO 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.

¹ Separate procedures are in place to deal with internal disclosures by workers in the HEA. These procedures outline all internal and external avenues by which a worker may make a protected disclosure.

(b) All matters relating to funding for universities and certain institutions of higher education designated under the Higher Education Authority Act 1971 (No. 22 of 1971).

5. In order to make a protected disclosure to a prescribed person a worker must make a disclosure of “relevant information” and must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true. The worker must also reasonably believe that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed. For further detailed information on what constitutes a protected disclosure, please see section **[3]** below.
6. The purpose of this document is to set out the HEA’s Procedures on protected disclosures for workers who wish to make a disclosure to the Chief Executive of the HEA in his capacity as a prescribed person. (For convenience in this document “HEA” shall include where appropriate the Chief Executive in his capacity as the prescribed person for the Higher Education Authority).

Principles and objectives

7. The objective of these Procedures is to facilitate all workers to make disclosures about possible wrongdoings that fall under the description of matters in respect of which the HEA is prescribed under S.I. 339/2014, 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.
8. These Procedures set out in detail 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 that fall within the description of matters in respect of which the HEA is prescribed under S.I. 339/2014 will, as a matter of routine, 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.
9. There are a number of benefits of a having appropriate procedures in place which include ensuring the early detection and remediation of potential wrongdoing; demonstrating to stakeholders, regulators and the courts that the public body is accountable and managed effectively; building a responsible and ethical organisational culture; and limiting the risk of reputational and financial damage.
10. The HEA is committed to the following:
 - (a) Facilitating the disclosure of relevant wrongdoings in accordance with the provisions of the 2014 Act and S.I. 339/2014.
 - (b) Encouraging workers to feel confident and safe about raising concerns of relevant wrongdoings under S.I. 339/2014 at the earliest opportunity.

- (c) Providing workers with guidance as to how to make protected disclosures.
- (d) Presenting avenues for workers to make disclosures about relevant wrongdoings under S.I. 339/2014.
- (e) Assisting, supporting and protecting workers who make protected disclosures.
- (f) 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.
- (g) Assessing any disclosure made, referring it to investigation, where warranted, and addressing all findings that require attention.
- (h) Reassuring workers that they will be protected from detriment, penalisation or any threat of penalisation for making a disclosure in accordance with these Procedures.

2 TO WHOM DO THESE PROCEDURES APPLY?

1. These Procedures apply to all "workers", as defined in the 2014 Act. The following list of "workers" can make disclosures under these Procedures:
 - Employees
 - Former employees
 - Temporary employees
 - Contractors
 - Consultants
 - Agency staff
 - Interns
 - Trainees²
2. Volunteers are not included in the definition of a "worker" and are not afforded any protections under the 2014 Act. However, the HEA is committed to ensuring that any person who is engaged by an organisation on a voluntary basis and wishes to make a disclosure may do so under the provisions of these Procedures.

Any volunteer who makes a disclosure in compliance with the conditions set out in these Procedures will be afforded appropriate protections by the HEA and their disclosures will be appropriately assessed and if necessary, referred to investigation. These appropriate protections are as follows:

² An individual who is provided with work experience by an educational establishment is excluded from the definition of "worker" under the 2014 Act.

(i) The identity of a volunteer who makes a disclosure of a relevant wrongdoing in line with these Procedures will be protected insofar as the person to whom the disclosure is made or the person to whom a disclosure is referred in the performance of that person's duties, will not disclose to another person, information that might identify the volunteer who made the disclosure. There are some exceptions to this protection. See section [6] for more information.

(ii) Volunteers will be protected from acts of detriment, penalisation or threats of penalisation, as set out at section [5] of these Procedures, for having made a disclosure of relevant information in line with the requirements of these Procedures. The HEA will take appropriate action to prevent and remedy any penalisation or detriment of volunteers when they do any of the following:

(a) Report a relevant wrongdoing under S.I. 339/2014

(b) Are suspected of making a report about a relevant wrongdoing under S.I. 339/2014

(c) Provide information or act as a witness as part of an investigation under these Procedures

(d) Are otherwise involved in actions under these Procedures.

3. A complaint of penalisation under these Procedures can be made by a volunteer in line with the provisions contained in section [5]. Note that a volunteer will not have a right of action under the 2014 Act for any claim of penalisation or detriment.

(iii) The assessment, investigation, feedback and review provisions at sections [10], [13] and [15] relating to disclosures of relevant wrongdoing made by "workers" will also apply to disclosures made by volunteers.

3 WHAT IS A PROTECTED DISCLOSURE FOR THE PURPOSES OF THESE PROCEDURES?

1. *Definition of Protected Disclosure*

A protected disclosure is a disclosure of relevant information, which, in the reasonable belief of the worker, tends to show one or more *relevant wrongdoings*. This information must come to the worker's attention in connection with his or her employment and it must be disclosed in the manner prescribed by the 2014 Act.

When making a protected disclosure to a prescribed person, there are additional requirements. The worker must reasonably believe that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under S.I. 339 and that the information disclosed, and any allegation contained in it, are substantially true. The following paragraphs explain the **key terms**.

2. **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 an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or
- (h) 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.

Disclosures may also be made by workers of wrong-doings in respect of other relevant employment specific or profession specific obligations which may not be covered in the above definition as set out in section 5 of the 2014 act.

A protected disclosure may be about a relevant wrongdoing that:

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

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. **Relevant wrongdoings that can be disclosed to the HEA**

S.I. 339/2014 identifies that wrongdoings 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 1971 that may be the subject of a protected disclosure to the HEA.

Where a worker is unsure whether a matter falls within the scope of these Procedures, he or she may contact the Chief Executive of the HEA (the contact details for the Chief Executive of the HEA are available at section [4] of these Procedures) or contact protecteddisclosures@hea.ie in confidence in advance of making a formal disclosure.

4. *Disclosure of information*

The disclosure must be a disclosure of “information” which tends to show wrongdoing and not merely a bare allegation or an expression of concern that is based on suspicion and not founded on anything tangible. Therefore, the disclosure must convey facts, such as stating that particular events have occurred.

Workers are not required or entitled to investigate matters themselves to find proof of the wrongdoing and should not endeavour to do so. All that is required of the worker is to disclose the information that he or she has, based on reasonable belief that it discloses a wrongdoing, and where the information relates to individuals, that it is necessary to disclose that information. When making a disclosure pursuant to S.I. 339/2014, the worker must also reasonably believe that the information disclosed, and any allegation contained in it, are substantially true.

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.

5. *Reasonable belief*

A worker must have a reasonable belief that the information disclosed shows, or tends to show, one or more relevant wrongdoings. 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.

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.

In order for a worker to make a disclosure to the HEA in its role as a prescribed person there are additional requirements that must be met in order for their disclosure to constitute a protected disclosure. In making their disclosure to the HEA in its capacity as a prescribed person under S.I. 339/2014, the worker must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true. Further, the worker must reasonably believe that the relevant wrongdoing falls within the description of matters in respect of which the HEA is prescribed pursuant to S.I. 339/2014.

6. *In connection with their employment*

The information must come to the attention of the worker in connection with his/her employment. However, 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, unless the act or omission is committed by his/her employer.

Legal advisors, where information comes to their attention while providing legal advice, are excluded from the protections of the 2014 Act. Where a claim to legal professional privilege could be maintained in respect of such information, it will not be a protected disclosure if it is disclosed by the legal advisor.

4 PROCEDURE FOR MAKING A DISCLOSURE

1. A worker must make a disclosure in the manner set out in the 2014 Act to gain the protections of the Act. Under the 2014 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.
2. 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 1971 (see section **[3]** for more information on what constitutes a protected disclosure for the purposes of these Procedures).
3. 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 verbally, 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.
4. 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, sequence of events and description of circumstances. The detail of the disclosure should be sufficient to enable a person without prior knowledge to understand the issue. Please see **Appendix A** for the Protected Disclosures Reporting Form and **Appendix B** for the details to be included in a written disclosure.
5. Disclosers are encouraged to frame their disclosure in terms of information that has come to his or her attention rather than seeking to draw conclusions about particular individuals or specific offences.
6. The earlier a disclosure is made the better the prospect of it being dealt with promptly.
7. A disclosure should be addressed to the Chief Executive at the following address:

Postal address: Higher Education Authority
3 Shelbourne Buildings
Crampton Avenue
Shelbourne Road
Dublin 4
D04 C2Y6

The HEA also has a dedicated email address to receive protected disclosures:

Email: protecteddisclosures@hea.ie

5 SAFEGUARDS AND PENALISATION/DETRIMENT

1. 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. The HEA will not penalise or threaten to penalise an employee for making a protected disclosure. Nor will it cause detriment to any worker who makes a disclosure in line with these Procedures. The HEA will take appropriate action in order to protect a worker who makes a protected disclosure.

What is penalisation/detriment?

2. Penalisation is defined under the 2014 Act as being any act or omission that affects a worker to his or her detriment and in particular includes:
 - (a) Suspension, lay-off or dismissal,
 - (b) Demotion or loss of opportunity for 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) Unfair treatment,
 - (f) Coercion, intimidation or harassment,
 - (g) Discrimination, disadvantage, unfair treatment,
 - (h) Injury, damage or loss, and
 - (i) Threat of reprisal³
3. A worker is entitled to protection from detriment suffered by the worker because that worker, or a third party, has made a protected disclosure. A detriment in this context includes coercion, intimidation, harassment, discrimination, disadvantage, adverse treatment in relation to employment (or prospective employment), injury, damage, loss or threat of reprisal.

What protections will the HEA provide to disclosers?

³ Employees are protected under section 11 of the 2014 Act from dismissal and under section 12 from “penalisation”, whilst workers and employees are protected from acts that constitute “detriment”. The HEA is committed to protecting all workers and volunteers from acts that constitute both penalisation and detriment.

4. The HEA will take appropriate action to prevent and remedy any penalisation or threat of penalisation of an employee or any detriment against a worker when they do any of the following:

(i) Report a relevant wrongdoing under S.I. 339/2014

(ii) Are suspected of making a report about a relevant wrongdoing under S.I. 339/2014

(iii) Provide information or act as a witness as part of an investigation under these Procedures

(iii) Seek redress under the provisions of the 2014 Act

(iv) Are otherwise involved in actions under these Procedures.

How to make a complaint of penalisation

5. A copy of the complaint of penalisation or detriment should immediately be brought to the attention of the Chief Executive of the HEA. If a complaint is made of penalisation or detriment contrary to the 2014 Act, then that complaint will be dealt with under these Procedures to ensure that the obligation to protect the identity of the discloser is complied with. All complaints of penalisation or detriment will be assessed and investigated, as appropriate, including, where warranted, being referred to the appropriate body for the purpose of an investigation.

6 PROTECTION OF IDENTITY OF THE DISCLOSER

1. The 2014 Act imposes an obligation on recipients of disclosures to protect the identity of the worker making the disclosure. The identity of the worker making a disclosure is protected to the extent that the person to whom the protected disclosure is made and any the person to whom a protected disclosure is referred in the performance of that person's duties, must not disclose to another person any information that might identify the person who made the protected disclosure.

2. All disclosures will be treated in confidence, unless the worker clearly states that he/she does not object to having his/her name associated with the disclosure. Disclosures will be kept secure and, in a form, that that does not endanger the confidentiality of the person making the disclosure. At all times, the focus will be on the information in the disclosure rather than the identity of the worker making the disclosure.

Exceptions

3. There are exceptions to this obligation to protect the identity of the discloser in a number of specific cases under the 2014 Act. These are:
 - (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.
 - (b) the person to whom the protected disclosure was made or referred reasonably believes that the person by whom the protected disclosure was made does not object to the disclosure of any such information.
 - (c) the person to whom the protected disclosure was made or referred reasonably believes that disclosing any such information is necessary for-
 - (i) the effective investigation of the relevant wrongdoing concerned,
 - (ii) the prevention of serious risk to the security of the State, public health, public safety or the environment, or
 - (iii) For 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.
4. 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.
5. 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 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 [15] for further information on this review process.

Complaints of a failure to protect a discloser's identity

6. 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.

7 RAISING A CONCERN ANONYMOUSLY

1. “Confidential disclosures” are disclosures where the identity of the discloser is known and is protected under the 2014 Act. “Anonymous disclosures” on the other hand are disclosures where the identity of the discloser is withheld by the discloser.
2. Anonymous disclosures are not excluded from the 2014 Act and the HEA will act upon such disclosures to the extent that this is possible in the circumstances. On a practical level, there may be restrictions on the ability to investigate the disclosure in the absence of the knowledge of the identity of the discloser. We would encourage workers to put their names to allegations, with our assurance of confidentiality where possible, in order to facilitate appropriate follow-up. This will make it easier to assess the disclosure and to take appropriate action, including an investigation if necessary.
3. Workers should further note that important elements of these Procedures (e.g. keeping the discloser informed and protecting a discloser from penalisation) may be difficult or impossible to apply unless workers identify themselves. Furthermore, workers cannot obtain redress under the 2014 Act without identifying themselves.

8 WHAT TYPES OF CONCERNS SHOULD NOT BE RAISED UNDER THESE PROCEDURES?

1. These Procedures apply to disclosures of “relevant wrongdoings” as defined under the 2014 Act and under S.I. 339/2014 (see section [3] for more information on what constitutes a protected disclosure). Disclosures that do not meet the requirements of the 2014 Act and S.I. 339/2014 are excluded from the ambit of these Procedures. A personal concern, for example a grievance around a worker’s own contract of employment, would not be regarded as a protected disclosure and would be more appropriately processed through their employer’s Grievance or Dignity at Work Policies

2. What is a personal grievance?

A grievance is a matter specific to the worker, i.e. the worker’s employment position around his/her duties, terms and conditions of employment, working procedures or working conditions.

Examples of a grievance

- Complaint around selection criteria for a promotional post.
- Complaint around the allocation of overtime.

3. What is a protected disclosure under these Procedures?

A protected disclosure for the purposes of these Procedures occurs when a worker discloses information about a relevant wrongdoing as per the requirements of the 2014 Act and S.I. 339/2014.

Examples of a protected disclosure

- Information on collusive tendering in a procurement process.
 - Information about the improper use of funds.
4. These Procedures are not intended to act as a substitute for normal day to day operational reporting or other internal employment policies. Personal employment complaints should generally be dealt with under the worker's employer's internal Grievance Policy or the Dignity at Work Policy.
 5. If a complaint is made of penalisation contrary to the 2014 Act, then in dealing with the complaint, the HEA will have regard to the continued obligation to protect the identity of the discloser under the 2014 Act.

9 MOTIVATION

1. Under the 2014 Act, the motivation for making a protected disclosure is deemed to be irrelevant 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.
2. A worker will be protected for having made a disclosure under these Procedures as long as he/she reasonably believes that the information disclosed shows or tends to show one or more relevant wrongdoings; that he/she reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and that he/she reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the HEA is prescribed under S.I. 339/2014. A disclosure made in absence of reasonable belief will not attract the protection of the 2014 Act.
3. A disclosure of a wrongdoing does not confer any protection or immunity on a worker in relation to any involvement that he/she may have had in that wrongdoing.

10 HOW WE WILL DEAL WITH YOUR DISCLOSURE

(a) Screening Process

1. When a disclosure of alleged wrongdoing is made, the Chief Executive of the HEA shall assign the matter to the Head of System Funding or another senior manager in the HEA. The person assigned responsibility for the matter shall undertake a screening assessment of the disclosure to determine whether it should be treated as a protected disclosure, having regard to the 2014 Act, S.I. 339/2014 and the within Procedures. If it is unclear whether the disclosure qualifies as a protected disclosure, the recipient will treat the disclosure as a protected disclosure (and protect the identity of the discloser in accordance with the Procedures) until satisfied that the information is not a protected disclosure.
2. It may be necessary, as part of the screening process, to differentiate between protected disclosures and personal complaints e.g. the information provided may involve a personal complaint and a protected disclosure. In these circumstances, it may be necessary to separate the different elements of the complaint/disclosure and determine whether any specific disclosure of information relating to a relevant wrongdoing has taken place.
3. If, having assessed the disclosure, it is deemed to relate solely to a personal complaint then the discloser will be encouraged to utilise other processes in their place of work (for example, the Grievance Policy or Dignity at Work Policy) so that the complaint can be dealt with in an appropriate manner.
4. If, having assessed the disclosure, there is a mix of different issues (i.e. issues involving a protected disclosure and a personal employment complaint) then the HEA will seek to establish an appropriate process/processes to be applied to deal with the issues, including referring the protected disclosure to an appropriate body for the purpose of an investigation. The process to be applied may differ from case to case.
5. If a meeting is requested by the person making the disclosure, or if the person agrees to a meeting with the HEA, this should be facilitated with two HEA members of staff attending. Notes of the meeting should be taken with the persons and this document may form part of the disclosure with his/her approval. The purpose of any such meeting will be to determine whether or not the disclosure constitutes a protected disclosure in accordance with the meaning of the 2014 Act, S.I. 339/2014 and the within Procedures.
6. If a disclosure does not constitute a protected disclosure under the 2014 Act and/or it does not fall within the description of matters in respect of which the Chief Executive of the HEA is prescribed under S.I. 339/2014, the worker who made the disclosure will be informed of this. If the HEA determines that the matter falls within the description of matters in respect of which another person is prescribed, the worker will be directed to make their disclosure to that prescribed person.

(b) Investigation

7. 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 under S.I. 339/2014, the HEA may, if it considers it appropriate, refer the protected disclosure to the higher education institution concerned and request the institution to undertake an investigation in respect of the protected disclosure.
8. The HEA will request the institution to outline in writing how it proposes to investigate the protected disclosure, how the independence and robustness of this process will be assured, the outcome of these investigations and actions arising from the investigation.
9. This correspondence will be directed to the President of the relevant institution, unless that person is the subject of any aspect of the disclosure. In the latter case, the correspondence will be addressed to the Chair of the institution's audit committee. At all times, the HEA's obligations under section 16 of the 2014 Act and outlined in section [6] of these Procedures will be respected as far as is reasonably practicable.
10. The HEA will communicate the outcome of the investigation conducted by the relevant institution to the discloser as soon as possible following receipt of this information from the relevant institution.
11. 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 disclosure from the institution, it may recommend to the Minister for Education 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.
12. It is important to note that some matters may be of such seriousness that the investigation will more appropriately be carried out externally, other than as outlined above, 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.

11 PROTECTION OF THE ALLEGED WRONGDOER

The HEA is committed to ensuring that where an allegation is made against an individual, he or she will be afforded appropriate protection, in line with the general principles of natural justice and fair procedures, as appropriate.

12 DISCIPLINARY RECORD OF DISCLOSER AND RELATED MATTERS

1. Where a worker makes a disclosure of alleged wrongdoing it will be given appropriate consideration, in line with these Procedures. The HEA will focus on the disclosure made, as opposed to any disciplinary (or other) issues related to the person making the disclosure.
2. 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 only attract the protections under the 2014 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 the investigation, disciplinary or other action represents, in essence, a form of penalisation for making a protected disclosure.

13 FEEDBACK

1. Workers who make a protected disclosure to the HEA under these Procedures will be provided with periodic feedback in relation to their disclosure and will be advised when consideration of the disclosure is complete, except in exceptional circumstances.
2. Any information and feedback will be provided to the discloser in confidence. When providing feedback, no information will be communicated to a discloser that could prejudice the outcome of the investigation or any action that ensues (e.g. disciplinary, or other legal action, including prosecution).

14 SUPPORT AND ADVICE

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

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

Email: helpline@transparency.ie **Website:** www.speakup.ie

A guide to making a Protected Disclosure is also available at:

https://transparency.ie/sites/default/files/14.12.02_speak_up_safely_final.pdf

15 REVIEW

1. A worker who makes a protected disclosure in accordance with these Procedures may seek a review of the following:

- (i) Any decision made to disclose the identity of the discloser (except in exceptional cases);
 - (ii) The outcome of any assessment/investigation undertaken in respect of the protected disclosure; and
 - (iii) The outcome of any assessment/investigation in respect of any complaint of penalisation.
2. A request for a review should be made to the Chief Executive of the HEA who, depending on the type of review requested, 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.
 3. Any review will be undertaken by a person who has not been involved in the initial assessment, investigation or decision. Where a decision is taken to disclose the identity of the discloser, where at all possible, the discloser will be offered a review before his / her identity is disclosed
 4. There is no entitlement to two reviews in respect of the same issue.

16 NON-RESTRICTION OF RIGHTS TO MAKE PROTECTED DISCLOSURES

The 2014 Act provides that it is not permitted to have clauses in agreements that prohibit or restrict the making of protected disclosures, exclude or limit the operation of any provision of the 2014 Act, preclude a person from bringing any proceedings under, or by virtue of, the 2014 Act and / or preclude a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.

17 MANDATORY REPORTING

The 2014 Act does not oblige a worker to make a protected disclosure and it does not absolve any worker from pre-existing mandatory obligations to report contained in other legislation.

18 COMMUNICATION, MONITORING AND REVIEW

1. These Procedures will be communicated to all workers via the protected disclosures webpage on the HEA website: <http://hea.ie/funding-governance-performance/governance/protected-disclosures/>
2. Confidential records will be kept of all matters raised through these Procedures and the Chief Executive will receive periodic reports on its effectiveness.

3. If these Procedures are revoked, replaced, or amended, this will be communicated on the protected disclosures webpage on the HEA website:

19 ANNUAL REPORT

The HEA will prepare and publish an Annual Report no later than 30 June each year in relation to the immediately preceding year, on an anonymised basis, setting out (a) the number of protected disclosures made to the public body, (b) the action (if any) taken in response to those protected disclosures, and (c) such other information relating to those protected disclosures and the action taken as may be requested by the Minister from time to time. This report will be “in a form that does not enable the identification of the persons involved”.

20 DATA PROTECTION

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 so as to comply with the requirements of confidentiality under the 2014 Act.

21 FURTHER RESOURCES

- (i) The Protected Disclosures Act 2014:

<http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/pdf>

- (ii) List of Prescribed Persons:

<http://www.irishstatutebook.ie/eli/2014/si/339/made/en/pdf>

<http://www.irishstatutebook.ie/eli/2015/si/448/made/en/pdf>

<http://www.irishstatutebook.ie/eli/2016/si/490/made/en/pdf>

- (iii) Workplace Relations Service: <http://www.workplacerelations.ie/en/>

- (iv) Transparency International Ireland: <http://transparency.ie/>

- (v) Transparency International Ireland Speak Up Helpline: 1800 844 866

www.speakup.ie

Appendix A Protected Disclosures Reporting Form

The Higher Education Authority (HEA) welcomes the reporting of disclosures under the “Procedures for Making a Protected Disclosure to the Higher Education Authority under Statutory Instrument S.I. 339/2014.”

Before completing this form, you should:

- Consider whether the “Procedures for Making a Protected Disclosure to the Higher Education Authority under Statutory Instrument S.I. 339/2014” 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 connection with your employment; 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 (section 7(2)) Order 2014, S.I. 339/2014 (as amended by S.I. 448/2015 and S.I. 490/2016).

Protected disclosures should be submitted to the Chief Executive as outlined in the “Procedures for Making a Protected Disclosure to the Higher Education Authority under Statutory Instrument S.I. 339/2014” **[see section 4 of those Procedures]**.

Name of worker making the disclosure: Anonymous reports will be considered but are not encouraged.		
Place of work:		
Position in the organisation:		
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?		
<p>Details of the alleged wrongdoing:</p> <p>What is occurring/has occurred/is likely to occur and how, together with any other supporting information.</p> <p>Care should be taken to only include information directly relevant to the disclosure.</p> <p>Please refer to section 3 of the Procedures and note that in the part entitled “Disclosure of information” it provides that a worker is not required to investigate matters themselves to find proof of the wrongdoing and should not endeavour to do so.</p>		
<p>Has the alleged wrongdoing been reported previously?</p> <p>If so, please specify when, to whom and what action was taken?</p>		
Any other relevant information:		
Date:		

Appendix B Details that should be included in a disclosure

It is recommended that, at a minimum, disclosures should include the following details:

(a) That the disclosure is being made under the “Procedures for Making a Protected Disclosure to the Higher Education Authority under Statutory Instrument S.I. 339/2014.”

(b) The discloser’s name, place of work, position in the organisation, and confidential contact details.

(c) The date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified.

(d) Whether or not the alleged wrongdoing is still ongoing.

(e) Whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken.

(f) Information in respect of the alleged wrongdoing (what is occurring / has occurred/ is likely to occur and how) and any supporting information.

(g) Any other relevant information.