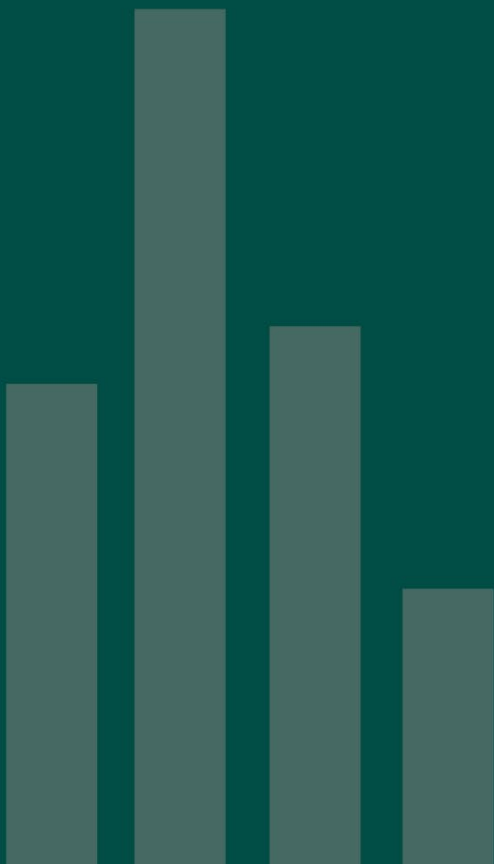


HEA

An tÚdarás um Ard-Oideachas
The Higher Education Authority

Internal Protected Disclosures Policy



**MAKING A PROTECTED DISCLOSURE TO THE HIGHER EDUCATION AUTHORITY (HEA) -
INTERNAL REPORTING CHANNEL**

Version Control
Version 1 – Prepared by HEA 2017
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Introduction: This policy sets out the internal reporting procedures for making a protected disclosure to the Higher Education Authority. This is distinct from the procedures for making a protected disclosure to the CEO of the HEA as a “prescribed person”, which is governed by a separate HEA policy.

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1. WHAT IS A PROTECTED DISCLOSURE?

Making a protected disclosure refers to a situation where a worker discloses information in relation to wrongdoing. The meaning of the term worker is outlined below in Section 2. This is sometimes referred to as “whistleblowing”. For the purposes of this policy, such a worker is referred to as a “worker” or “discloser” and disclosing information in relation to alleged wrongdoing in accordance with the Protected Disclosures Amendment Act 2022 (the 2022 Act) is referred to as “making a disclosure”. A disclosure made under this Act may name persons alleged to be involved in or otherwise connected with the wrongdoing reported. Such persons – referred to as “persons concerned” – also have certain protections under the Act. 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”.

1.1 The 2022 Act provides specific remedies for workers who are penalised for making a disclosure in the public interest and for connected purposes. For the purposes of this policy, the term “penalisation” includes any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report and causes or may cause unjustified detriment. This could include:

- suspension/layoff/dismissal
- demotion or loss of opportunity for promotion
- transfer of duties/change of location or in working hours, reduction in wages, discipline, reprimand or imposition of any penalty (including financial), unfair treatment, coercion, intimidation or harassment, discrimination, disadvantage or unfair treatment, injury, damage or loss, threat of reprisal, withholding of training, negative performance assessment or employment reference, failure to extend contract or early termination of contract, harm, including reputation (particularly via social media) or financial loss, blacklisting (informal or formal, sector or industry-wide), early termination of a contract for goods and services, cancellation of a licence or permit, or psychiatric or medical referrals.

1.2 The 2022 Act provides significant forms of redress for penalisation and also allows a claim for loss suffered as a result of a failure to protect a discloser’s identity. Workers who believe they have been penalised for making a disclosure may seek external legal remedies.

2. APPLICATION

2.1 This policy applies to all workers as defined in section 4 of the 2022 Act, which includes current and former employees, independent contractors, trainees and agency staff in the HEA. While the Act only applies to workers; volunteers and members of the public may disclose wrongdoing, and any such disclosures will be appropriately assessed and investigated. “Worker” in this context also includes volunteers, unpaid trainees, board members, shareholders, members of

administrative, management or supervisory bodies and job applicants (where information on a relevant wrongdoing is acquired during the recruitment process or during pre-contractual negotiations).

3. PURPOSE OF POLICY AND BOARD/MANAGEMENT COMMITMENT

- 3.1 This policy sets out the process by which a worker in the Higher Education Authority (HEA) can make a disclosure, what will happen when a disclosure is made and what the HEA will do to protect a discloser.
- 3.2 The CEO & Board of the HEA are committed to the following:
- (a) Facilitating the disclosure of wrongdoing and thereby ensuring an ethical and open workplace culture;
 - (b) Encouraging workers to make protected disclosures at the earliest possible opportunity;
 - (c) Providing workers with guidance as to how to make protected disclosures;
 - (d) Assisting, supporting and protecting workers who make protected disclosures;
 - (e) Protecting a worker's identity in a manner consistent with the requirements of the 2022 Act and taking action where those requirements have been breached;
 - (f) Assessing any disclosure made, conducting an investigation, where warranted, and addressing all findings that require attention; and keeping the worker updated where appropriate;
 - (g) Providing that workers are not to be penalised for reporting relevant wrongdoings; and
 - (h) Taking appropriate action against workers who make disclosures without a reasonable belief in the truth of the disclosure.

4. RESPONSIBILITY

- 4.1 Overall responsibility for this policy rests with the CEO of the HEA. Day-to-day responsibility for this policy is delegated to the Head of Corporate Affairs. Oversight of this policy rests with the Authority (HEA Board).

5. PROTECTED DISCLOSURES: GUIDANCE ON TERMINOLOGY

- 5.1 A protected disclosure is defined in the Protected Disclosures (Amendment) Act as a disclosure of relevant information which, in the reasonable belief of the worker, tends to show one or more relevant wrongdoings, which came to the attention of the worker in a work-related context and is disclosed in the manner prescribed in the Act. A protected disclosure under this policy may be about a relevant wrongdoing:

- That is happening now;

- That took place in the past;
- That is about to happen.

5.2 Relevant wrongdoing

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

- (a) The commission of an offence;
- (b) The failure of a person to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services;
- (c) A miscarriage of justice;
- (d) A danger to the health and safety of any individual;
- (e) Damage to the environment;
- (f) An unlawful or otherwise improper use of funds or resources of a public body, or of other public money;
- (g) An act or omission by or on behalf of a public body that is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement; or
- (h) Information tending to show any matter falling within any of the preceding paragraphs (a) to (g) has been, is being, or is likely to be concealed or destroyed.

5.2.2 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.

5.3 Disclosure of information

5.3.1 A disclosure should contain "information" which tends to show wrongdoing. The ordinary meaning of disclosing "information" is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation, for example, that a law is being breached.

5.3.2 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. Workers should also be satisfied that the information is necessary to disclose that wrongdoing and should not access, process, disclose or seek to disclose information about individuals that is not necessary for the purpose of disclosing the wrongdoing.

5.4 Reasonable belief

- 5.4.1 A worker must have a reasonable belief that the information disclosed tends to show a wrongdoing. The term “reasonable belief” does not mean that the belief has to be correct. A worker is entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.
- 5.4.2 It may be quite reasonable for a worker to believe that a wrongdoing is occurring on the basis of what they observe. A worker may not know all the facts of the case and as noted above in section 5.3, the worker is not obliged to find proof of their suspicion. In such a case the worker may have reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the worker was mistaken.
- 5.4.3 No worker will be penalised simply for getting it wrong, so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

5.5 **In a work-related context**

- 5.5.1 The information must come to the attention of the worker in a work-related context, but a disclosure of any wrongdoing which is the worker’s, or the worker’s employer’s, function to detect, investigate or prosecute does not come within the terms, or attract the protections and redress, of the 2022 Act. A work-related context means current or past work activities in the public or private sector through which, irrespective of the nature of these activities, the reporting person acquires information concerning a relevant wrongdoing, and within which the reporting person could suffer penalisation for reporting the information. A worker becomes a reporting person when they make a report/disclosure under the Act.
- 5.5.2 Note this policy does not apply to personal disputes/grievances. See section 10 for more details.

6. **MAKING A DISCLOSURE**

- 6.1 A worker must make a disclosure in the manner set out in the 2022 Act to gain the protections of the Act. Different standards apply depending on the person or body to whom the worker discloses. A disclosure can be made in the following ways:

6.1.1 **To the employer**

We encourage all workers to make disclosures internally to their employer and to use the internal procedures. Such disclosures will be taken seriously and the worker making a protected disclosure will receive appropriate protection.

A concern can in the first instance, if appropriate, be discussed informally with the worker’s line manager. The manager may then refer the matter to the Head of Corporate Affairs for assessment of whether the concern is a protected disclosure. This will be done in consultation with the reporting person. If a worker wishes to raise a concern formally, they can contact the Head of Corporate Affairs in the first instance.

If the worker feels compromised or unable to make the disclosure to their line manager, (s)he may raise the matter formally with the Head of Corporate Affairs, or if necessary, another member of the Senior Management Team, including the CEO. In most cases, the Head of Corporate Affairs will be designated person for disclosures, and they will be responsible for following up on reports, carrying out an initial assessment of the report, maintaining communication with the reporting person, and requesting further information from, and providing feedback to, the reporting person.

The HEA has a duty to keep the identities of reporting persons and persons concerned confidential during this process. This is managed by restricting access to the identities to only those designated to investigate the disclosure, and by ensuring there are secure contact channels as per the below that workers can use to make disclosures.

Workers can use the following email address and phone number to make reports to HEA:

Write to: Head of Corporate Affairs, Higher Education Authority, 3 Shelbourne Buildings, Shelbourne Rd, Ballsbridge Dublin 4.

Email: protecteddisclosures.internal@hea.ie

Phone number: +012317106

The HEA will ensure that all managers are made aware of their responsibilities as recipients of a potential protected disclosure in the first instance. See appendix B.

Before electing to make a disclosure to a person outside the HEA the worker may wish to make a protected disclosure to the Chairperson, Deputy Chair, Chair of the Audit and Risk Committee or any other Member of the Board.

6.1.2 Disclosure outside the employer

Workers are encouraged to make their disclosure internally, even if they have already made an external report. 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 as a result of a disclosure.¹

The 2022 Act allows a worker to make a disclosure to persons other than their employer in certain circumstances. The identity of a person concerned must be protected by a prescribed person, suitable person, or by the Commissioner for Protected Disclosures. Different requirements need to be met in different cases, as set out at (a) to (e) below:

(a) Other responsible person

¹ Please see the Speakup webpage for more information and support www.speakup.ie

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

(b) A prescribed person

Certain persons are prescribed by Statutory Instrument 367 of 2020 ("SI 367") to receive disclosures ("prescribed persons"). This includes the heads or senior officials of a range of statutory bodies.

A worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under SI 367. However, the 2022 Act also provides an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, are substantially true. These reports can be made verbally.

A list of prescribed persons can be found here-

<https://www.gov.ie/en/collection/41798-protected-disclosures-whistleblowing-list-of-prescribed-persons/>

(c) A Minister of the Government

If a worker is or was employed in a public body, they may make a disclosure under Section 8 of the Act to the Minister for Further and Higher Education, Research, Innovation and Science.

(d) THE OFFICE OF THE PROTECTED DISCLOSURES COMMISSIONER

The 2022 Act provides for the establishment of the Office of the Protected Disclosures Commissioner, within the Office of the Ombudsman. The Commissioner will receive and redirect to the most suitable authority, protected disclosures made 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. These reports can be made verbally to the Commissioner.

(e) A legal adviser

The 2022 Act allows a disclosure to be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body. Legal advisors themselves, where information comes to their attention while providing legal advice, are not protected under the Act.

(f) 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 one of the disclosure options at (a) to (d) above. It will rarely be appropriate to make alternative external disclosures where the disclosure could be dealt with through one of the other disclosure options above. There are stringent

requirements for alternative external disclosures to qualify as protected disclosures under the 2014 Act.

The protections will only be available if the following conditions are met:

- The worker must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true; AND
- The disclosure must not be made for personal gain; AND
- At least one of the following conditions at (i) to (iv) must be met if you elect to make an external disclosure:
 - (i) At the time the disclosure was made the worker reasonably believed that they would be penalised if they made the disclosure to the employer, a responsible person, a prescribed person or a Minister; or
 - (ii) Where there is no relevant prescribed person, the worker reasonably believed that it was likely that evidence would be concealed or destroyed if the worker made the disclosure to the employer or responsible person; or
 - (iii) The worker has previously made a disclosure of substantially the same information to the employer, a responsible person, a prescribed person or a Minister; or
 - (iv) The wrongdoing is of an exceptionally serious nature;

AND

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

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

7. PENALISATION (INCLUDING DISMISSAL AND DETRIMENT)

- 7.1 The 2022 Act provides specific remedies for workers who are penalised for making a disclosure. Penalisation means any act or omission that affects a worker to the worker's detriment and includes suspension, lay-off, dismissal, demotion, loss of opportunity for promotion, transfer of duties, change of location of place of work, reduction in wages, change in working hours, the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty), unfair treatment, coercion, intimidation, harassment, discrimination, disadvantage, injury, damage, loss or threat of reprisal.

- 7.2 Penalisation can also include a detriment suffered by an individual because that individual, or a third party, has made a 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.
- 7.3 All reasonable steps will be taken to protect workers from penalisation. The HEA as an organisation will not tolerate penalisation of workers who make a report. Workers who experience any act of penalisation should notify their employer and the notification will be assessed / investigated and appropriate action taken where necessary.
- 7.4 Reports of penalisation can be made to the Head of HR. Furthermore, any claim of penalisation has to be made to the WRC by the discloser within 6 months of the penalisation occurring, so any complaint of penalisation needs to be addressed internally without delay. Penalisation will be investigated separately from the disclosure reports received.

8. CONFIDENTIALITY / PROTECTION OF IDENTITY

- 8.1 The 2022 Act provides that a disclosure recipient (which in this context includes any person to whom a disclosure is referred in the performance of their duties) must not disclose to another person any information that might identify the discloser, without the explicit consent of the reporting person, except where:
- (i) the disclosure recipient shows that they took all reasonable steps to avoid so disclosing any such information,
 - (ii) the disclosure recipient reasonably believes that the discloser does not object to the disclosure of any such information,
 - (iii) the disclosure recipient reasonably believes that disclosing any such information is necessary for —
 - (a) the effective investigation of the relevant wrongdoing concerned,
 - (b) the prevention of serious risk to the security of the State, public health, public safety or the environment, or
 - (c) the prevention of crime or prosecution of a criminal offence,
- OR
- (iv) the disclosure is otherwise necessary in the public interest or is required by law.
- 8.2 Where action is to be taken following a disclosure, except in exceptional cases, the disclosure recipient should contact the discloser and, where possible, gain the informed consent of the discloser, prior to any action being taken that could identify them.

- 8.3 Where the identity of the reporting person is disclosed to another person, the reporting person shall be informed in writing before their identity is disclosed, unless such information would jeopardise related investigations or judicial proceedings. The discloser may request a review of this decision and a review should be carried out, where practicable.
- 8.4 All reasonable steps will be taken to protect the identity of the discloser, except as set out in clause 8.1 above. Workers who are concerned that their identity is not being protected should notify their employer. Such notifications will be assessed and/or investigated and appropriate action taken where necessary.
- 8.5 The HEA will ensure confidentiality of the process by restricting access to records relating to protected disclosures only to designated persons. Designated persons are those who are responsible for investigating and responding to the disclosure. Paper records will not be retained, and digital records will be access-restricted.
- 8.6 Any persons proven to have been involved in or contributing to penalisation; breaching duty of confidentiality; bringing vexatious proceedings may be subject to disciplinary action and criminal penalties.

9. ANONYMOUS DISCLOSURES

- 9.1 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 we will act upon such disclosures to the extent that this is possible.
- 9.2 We encourage workers to provide as much information as possible in relation to the alleged relevant wrongdoing. This may allow us to engage with the worker and seek further information as required. Disclosures may be made anonymously, however, we would ask that in doing so workers provide an anonymous email address that will allow the recipient of the disclosure to correspond with them. It should be noted that in certain circumstances and for the purposes of conducting an investigation, the worker may need to reveal their identity – for example, to determine whether the person making a disclosure is a worker. This will not affect the worker's rights or the HEA's responsibilities to protect their confidentiality.
- 9.3 For anonymous disclosures, the person receiving the report shall record in a manner they deem appropriate, the receipt or transmission of the disclosure, and such information relating to the disclosure that the person receiving the report considers necessary and appropriate for the purposes of the Act, should the person making the report be subsequently identified and penalised. For example, this could include the details of the wrongdoing disclosed and the identity of other persons referred to in the disclosure.

If the worker chooses not to provide a means of communication when making a protected disclosure, we will do our best to investigate the concerns that have

been raised. However, we may not be able to keep the worker updated on the progress and/or outcome of any investigations into the report.

- 9.4 Workers should note that important elements of this policy (e.g. keeping the discloser informed and protecting a discloser from penalisation) may be difficult or impossible to apply unless the worker is prepared to identify themselves. Also, a worker cannot obtain redress under the 2022 Act without identifying themselves.

10. PERSONAL COMPLAINTS VS PROTECTED DISCLOSURES

- 10.1 The 2022 Act is intended to deal with disclosures in the public interest and for connected purposes. This normally involves wrongdoings that are likely to cause harm to the organisation itself or to the public at large, as opposed to personal complaints.
- 10.2 This policy is not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures. Personal complaints should generally be dealt with under the HEA's policies and procedures such as the Dignity at Work Policy or Staff Grievance Policy.
- 10.3 For example, a worker may complain that there is a breach of the worker's own terms and conditions. That type of complaint should generally be dealt with under the Staff Grievance Policy. Alternatively, a worker may claim that they are being bullied or harassed by a colleague. That type of complaint should generally be dealt with under the Dignity at Work Policy. If a complaint is made of penalisation contrary to the 2022 Act, then that complaint will be dealt with under this policy (in accordance with paragraph 9.3) so as to ensure that the obligation to protect the identity of the discloser is complied with.

11. MOTIVATION

- 11.1 The motivation of the worker for making a disclosure is irrelevant when determining whether or not it is a disclosure protected by the 2022 Act. All disclosures will be dealt with regardless of the worker's motivation for making the disclosure, and the worker will be protected so long as the worker reasonably believes that the information disclosed tended to show a wrongdoing.
- 11.2 However, a disclosure made in the absence of a reasonable belief will not attract the protection of the 2022 Act and this may result in disciplinary action against the discloser. In addition, disclosure of a wrongdoing does not confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing.
- 11.3 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.

12. ASSESSMENT AND INVESTIGATION

- 12.1 When a disclosure of alleged wrongdoing is made, an initial screening process involving a risk assessment should be undertaken. If a report is made verbally, accurate minutes of the conversation will be kept. A verbal report can take place via a physical meeting where appropriate. The screening process will involve an assessment of the disclosure to seek to determine whether or not it should be treated as a potentially protected disclosure. If it is unclear whether information qualifies as a potentially protected disclosure, the recipient should treat the information as a protected disclosure (and protect the identity of the discloser, subject to clause 8.1) until satisfied that the information is not a protected disclosure. The individual assessing the disclosure will be independent and will not have any conflicts of interest. The HEA will acknowledge a report, in writing, to the reporting person within 7 days of receipt of the report and will reference this policy in the acknowledgment. This designated person will be 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. The HEA may appoint an outside person to investigate the disclosure if appropriate.
- 12.2 It may be necessary, as part of the screening process, to differentiate between protected disclosures and personal complaints. For example, where the information provided may involve a personal complaint and a protected disclosure. In these circumstances, it may be necessary to disentangle the different elements of the complaint/disclosure and determine whether any specific disclosure of information relating to a relevant wrongdoing has taken place.
- 12.3 The risk assessment should consider whether the alleged wrongdoing is serious or minor, whether it is something that can be investigated or not, and, if it can be investigated, what steps should be taken as part of such an investigation. If an investigation is required, the HEA will consider the nature and extent of the investigation. This could consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoings possibly undertaken by the HEA's internal auditors, or an external investigation by another body.
- 12.4 It is important to note that 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. In these very exceptional circumstances, it may be necessary to disclose the identity of the reporting person. The reporting person will be informed of this in writing and given reasons in advance.
- 12.5 If, after an appropriate investigation has been undertaken, it is determined that wrongdoing has occurred then the findings will be addressed and appropriate action will be taken where necessary. In accordance with best practice the HEA will

inform the reporting person of the final outcome of the process while respecting the rights of other parties to natural justice - see section 13 below.

12.6 If there are shortcomings or failings identified in the investigation process, the HEA will address these as part of a review process as outlined in Section 15 below.

12.7 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 co-operate with the protected disclosure process, this may make follow-up, including any investigation, more difficult

13. PROTECTIONS UNDER THE ACT

13.1 Protection of Rights of Respondents

13.1.1 Where an allegation is made against an individual (the respondent), the principles of natural justice and fair procedures will be complied with, as appropriate. This includes affording the person(s) against whom protected disclosures have been made against the right to be informed of the alleged wrongdoing, the right to respond to such allegations and the right to have a work colleague or union representative attend all hearings.

13.1.2 While an individual is entitled to obtain their own legal advice, there is no automatic right to legal representation at the investigation meetings themselves. In addition, the Respondent has no right to have legal costs paid by the public body. This applies equally to legal representation and payment of legal costs for the reporting person. A right to legal representation will only arise in exceptional circumstances.

13.2 Protection from Legal Liability

13.2.1 Civil legal action, with the exception of Defamation, cannot be taken against a worker who makes a protected disclosure. Workers can be sued for defamation but are entitled to the defence of “qualified privilege.” This means that it should be very difficult for a defamation case against a worker to succeed if the worker can show they have made a protected disclosure. There is no other basis under which a worker can be sued if they have made a protected disclosure.

If a worker is prosecuted for disclosing information that is prohibited or restricted, it is a defence for the worker to show they reasonably believed they were making a protected disclosure at the time they disclosed the information.

It is not permitted to have clauses in agreements that prohibit or restrict the making of a protected disclosure, exclude or limit any provision of the Act, preclude a person from bringing proceedings under or by virtue of the Act or preclude a person from

bringing proceedings for breach of contract in respect of anything done in consequence of making a protected disclosure.

Please refer to Section 17 (“Support and Advice”) of this policy on how to obtain further information and independent, confidential advice in relation to statutory rights.

13.3 Criminal offences

13.3.1 Section 14A of the Act sets out a range of criminal offences for breaches of the protections provided by the Act. A person commits an offence if they:

- i. hinder or attempt to hinder a worker in making a report;
- ii. Penalise or threaten penalisation, or cause or permit any other person to penalise or threaten penalisation against a reporting person, a facilitator, a third person who is connected to the reporting person and who could suffer work related penalisation, or a legal entity the reporting person owns or works for or is otherwise connected with;
- iii. Bring vexatious proceedings against any person or legal entity referred to at ii;
- iv. Breach the duty of confidentiality regarding the identity of reporting persons;
- v. make a report containing any information that the reporting person knows to be false, or
- vi. Fail to comply with the requirement to establish, maintain and operate internal reporting channels and procedures.

13.3.2 If an offence is committed by a public body, and is committed with the consent of, or is attributable to the neglect on the part of a director, manager or other officer of the public body, that person will also be liable for prosecution.

On conviction, fines up to €250,000 or imprisonment for up to 2 years, or both, may be imposed.

14. DISCIPLINARY RECORD OF DISCLOSER AND OTHER RELATED MATTERS

14.1 Where a worker makes a disclosure of alleged wrongdoing it will be given appropriate consideration. We will generally focus on the disclosure made (the message), as opposed to any disciplinary (or other) issues related to the person making the disclosure (the messenger).

14.2 In general where a disclosure is made during an investigation, disciplinary or other process, this should not affect those distinct processes. However, an exception might be made where the worker can demonstrate that the investigation, disciplinary or other action is found to be a form of penalisation for making a protected disclosure.

15. REVIEW

15.1 The discloser may seek a review in the following circumstances:

- By the reporting person into a decision, following initial assessment, to close the procedure or refer the matter to another procedure;
- By any affected party in respect of the conduct or outcome of any follow-up actions (including investigation) taken on foot of the receipt of a report;
- By any affected party in respect of the conduct or outcome of any investigation into a complaint of penalisation; and
- Except in exceptional cases, by any party affected by any decision to disclose the identity of the reporting person to persons other than those authorised under these procedures to handle reports.

15.2 All requests for a review must be made in writing to the Designated Person (Head of Corporate Affairs) within one month of notification of the relevant action or conduct or decision. The person requesting review should clearly set out the reason(s) they are seeking a review.

15.3 The review will be conducted by a person who has not been involved in the original process under review and who is at least equivalent, if not more senior than the person who conducted the original process.

15.4 Reviews may be undertaken by a member of Senior Management in the HEA or a suitably qualified external person, as appropriate and at the discretion of the CEO.

15.5 The role of the reviewer should not be to re-assess, re-examine or re-investigate the matter in question but to address the specific issues the person requesting the review feels have received insufficient consideration. The reviewer should, therefore, consider whether the original decision was reasonable and made in accordance with the law and this policy.

15.6 The outcome of the review will be final and there will be no entitlement to further reviews of the same issues. It will be communicated in writing to the requesting party within a reasonable timeframe and will outline whether the original decision is upheld, varied, or set aside; the reasons for the decision; and any further actions to be taken.

16. FEEDBACK

16.1 The individual investigating the report will be responsible for maintaining communication with the reporting person. The designated person will be required to diligently follow up on the report. Diligent follow-up includes the provision of feedback within a reasonable period and, in any case, within 3 months, and if requested by the reporter in writing, at 3-month intervals, until such time as the procedure relating to the report is closed. It must include the carrying out of an initial assessment. Feedback can consist of action taken or expected to be taken to address the wrongdoing reported.

When providing feedback no information will be communicated that could prejudice the outcome of the investigation or any action that ensues (e.g. disciplinary, or other legal action, including prosecution), or that could identify a third party.

17. SUPPORT AND ADVICE

- 17.1 Workers are advised that the HEA's Employee Assistance Programme is available should they require support or advice. Details of the programme are available on the HEA's intranet pages.
- 17.2 Independent and confidential advice for anyone considering reporting a concern or making a protected disclosure is available via TI Ireland's Speak Up Helpline. The helpline operates from 10 am to 6 pm Monday to Friday. You can also make an enquiry via secure online form or encrypted text.

Contact details:

Freephone: 1800 844 866

Email: helpline@transparency.ie

Website: www.speakup.ie

Where appropriate, the Helpline can refer callers to access free legal advice from the Transparency Legal Advice Centre (see <https://www.transparency.ie/helpline/TLAC>)

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

18. IT IS NOT POSSIBLE TO CONTRACT-OUT OF THE 2014 ACT

- 18.1 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 Act, preclude a person from bringing any proceedings under, or by virtue of, the Act and/or precluding a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.
- 18.2 The HEA as an employer will never ask a worker (or former worker) to waive their right to make a protected disclosure under any circumstances.

19. FREEDOM OF INFORMATION

The Freedom of Information Act 2014 (the "FOI Act") has been amended by the Protected Disclosures (Amendment) Act 2022. As a result of this amendment, the FOI Act does not apply to a record relating to a report made under the Act, whether the report was made before or after the date of the passing of the Protected Disclosures (Amendment) Act 2022. Records concerning a public body's general administration of its functions under the Act are however subject to FOI. The HEA may also refer to

Protected Disclosures received and processed in the Annual Report, however no confidential information will be included.

20. MANDATORY REPORTING

- 20.1 The 2022 Act does not oblige a worker to make a disclosure and it also does not absolve any worker from pre-existing mandatory obligations to report contained in other legislation. There are several other pieces of legislation which contain mandatory reporting provisions. Workers should in particular have regard to the reporting requirements outlined in the HEA's Child Protection Guidelines.

21. THE INFORMATION THAT SHOULD BE PROVIDED IN A DISCLOSURE

- 21.1 Workers should be able to make disclosures in accessible formats e.g. verbally, electronically or in writing. When a disclosure which appears to be a protected disclosure is made verbally it should be documented by the recipient. Where practicable, the discloser should be asked to confirm the information provided to avoid dispute at a later date in relation to the information disclosed.
- 21.2 A list of the details that it is recommended should be included in a disclosure is to be found at Appendix A of this policy. All records of disclosures should be securely maintained so as to comply with the requirements of confidentiality under the 2022 Act and with relevant obligations under Data Protection legislation.

22. AMENDMENTS

- 22.1 This policy may be revoked, replaced or amended at any time and you will be informed of any changes that are implemented. This Policy will be reviewed every 24 months at a minimum.

APPENDIX A- What 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 “Internal Policy for Making a Protected Disclosure to the Higher Education Authority.
- (b) The discloser’s name, position in the organisation, place of work 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) 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); and,
- (h) Any other relevant information.

APPENDIX B- Procedure for dealing with disclosures

1. Purpose

This SOP sets out the operational process for receiving, recording, assessing and managing internal protected disclosures made and is aimed at supporting a consistent, fair and confidential handling process.

2. Scope

This SOP applies to all internal protected disclosures received by the HEA where the Head of Corporate Affairs (Designated Person) is designated as the internal recipient, or, where as appropriate, another Senior Manager in Corporate Affairs is appointed as an alternative Designated Person.

It covers disclosures made by workers, contractors or board members.

3. Receipt & Acknowledgement

The Designated Person logs the disclosure in the confidential Protected Disclosures Register. Written acknowledgement is issued within 7 days, unless anonymity prevents this or acknowledgement may compromise confidentiality.

The Discloser is provided with information on the process, confidentiality protections and expected timelines on acknowledgement.

4. Initial Assessment

The Designated Person conducts a preliminary assessment to:

- Determine whether the matter falls within the definition of a protected disclosure
- Identify any immediate risks (e.g., safety, legal, financial, reputational)
- Decide whether screening, referral, or investigation is required
- Identify potential conflicts of interest and reassign where necessary

5. Investigation / Action

Once the Designated Person has determined that a Disclosure has been made, the following actions will be taken and the Screening / Investigation Process will begin. The Designated Person will assess whether the disclosure report is based on a reasonable belief but ungrounded, based on a reasonable belief and grounded or a deliberately false report and will take appropriate action where necessary if the disclosure is grounded, including:

- Record the disclosure and the steps taken to deal with it.
- Clarify the basis of the concerns raised with the worker.

- Establish what evidence is available to support the concern.
- Consider any personal interest the worker might have in the issue concerned.
- Risk assess the issue and take immediate action if the alleged wrongdoing involves a serious loss or danger to others.
- Carry out relevant enquiries promptly, sensitively and discretely, taking all reasonable steps to protect the identity of the maker of the disclosure.

At this stage, depending on the nature of the disclosure, the designated person should ascertain if it may be necessary to reveal the worker's identity. In doing so the designated person may consult the CEO.

- If it is necessary to reveal the worker's identity to undertake an effective enquiry, consult with the worker.

Obtain evidence from any relevant witnesses.

Where the Designated Persons considers it required, the following actions will be undertaken:

(1) An impartial person/team will be appointed

The Designated Person may appoint an impartial authorised person /team to perform duties, including an initial assessment or screening process, as appropriate.

It may also be determined that an Investigation should be carried out by an independent external person or body, where appropriate.

(2) Terms of reference documented

Terms of Reference are not required for all investigations but should normally be prepared for more complex or serious matters. When drafting Terms of Reference, care must be taken to ensure they do not unduly restrict the scope or conduct of the investigation. In particular, the Terms of Reference should permit investigators to examine additional issues that arise during the investigation, to interview any witnesses they consider relevant, and to review any documentation deemed necessary to carry out the investigation effectively.

(3) Natural justice and procedural fairness will be upheld

All assessments / investigations will be undertaken in accordance with the general principles of natural justice and fair procedures, and any other relevant procedures of the HEA, as appropriate.

Where an allegation is made against an individual (the Respondent), the Respondent will be afforded appropriate protection in accordance with the principles of natural justice and fair procedures. This includes the right to be informed of the allegations and the right to a fair and impartial process.

Fair procedures may include a right to challenge the evidence relied upon; however, this will be balanced against statutory protections, including the reporting person's right to confidentiality. Direct questioning of the reporting person may not be required where evidence has been independently verified or obtained through alternative means.

Where disclosure of the reporting person's identity is restricted or a disclosure is made anonymously, the Respondent should, insofar as possible, be enabled to challenge the evidence through appropriate mechanisms, such as written questions submitted via an intermediary. In all cases, the Respondent must be given an opportunity to respond to the contents of the disclosure and to any evidence or witness statements gathered during the investigation.

(4) Evidence is gathered proportionately and securely

Evidence that is relevant to the disclosure will be identified, collected and retained in a lawful, proportionate and confidential manner.

Access to evidence will be restricted to authorised persons only and stored securely in line with data protection and record management requirements.

The Investigation will be limited to what is necessary to establish the facts of the matter disclosed.

(5) Interim risk controls may be implemented where appropriate

Where necessary, interim measures can be introduced during this process for the protection of individuals, evidence or other matters concerning the integrity of the process. Any risk controls implemented will be proportionate, time-bound and subject to regular review. These controls will not disadvantage a reporting person for having made a protected disclosure.

6. Communication and Follow Up

The HEA will acknowledge a report, in writing, to the reporting person within 7 days of receipt of the report, and will reference this policy in the acknowledgment.

Written feedback will be provided to the worker within a reasonable time period and no later than 3 months after the initial acknowledgement of the report. Further feedback will be provided at 3 month intervals, where requested by a reporting person, until the process of follow-up is completed. The full investigation report is not included in the final feedback provided to the reporting person.

Reporting persons will be advised of their rights during this process and will be made aware of external supports available to them e.g. trade union representative or legal advisor.

The Senior Management Team/CEO will be kept abreast of the status of investigations and outcomes as necessary throughout the process.

7. Confidentiality

The identity of discloser and any individuals involved will be protected. Records of each report considered under this policy will be received under the contact email and saved in a confidential drive in line with the appropriate retention policy. Records will be securely stored and access restricted. The processing of personal data under this SOP complies with data protection obligations.

8. Conflicts of Interest

If the disclosure concerns the Receiver, the matter will be referred to an alternative designated recipient of appropriate seniority and the Designated Person will have no further involvement in the matter

9. Review

The process is reviewed periodically to ensure compliance with legislation and best practice. Lessons learned may inform training, governance improvements, and risk management.

APPENDIX C- DATA PROTECTION

- It can be expected that most, if not all, protected disclosures will involve the processing of personal data. At a minimum, this will likely include the personal details of the reporting person but might also include information regarding persons concerned or other third parties.
- Section 16B(7) of the amended Act provides that all personal data shall be processed in accordance with applicable data protection law. This includes, inter alia, the General Data Protection Regulation (GDPR). The amended Act provides a general lawful basis for the collection and processing of such personal data.
- In accordance with the principle of data minimisation, only personal data that is strictly necessary to the purpose of the protected disclosure shall be processed.
- In certain circumstances, and where necessary and proportionate, the rights of data subjects under data protection law are restricted in respect of their personal data processed for the purposes of the Act, including receiving, dealing with or transmitting a report of a disclosure or follow-up on such a report. The restrictions apply, among other situations, to the extent necessary, and for as long as is necessary, to prevent and address attempts to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations, or attempts to find out the identity of reporting persons.
- The restrictions also apply where it is necessary and proportionate (a) to prevent the disclosure of information that might identify the reporting person, where such disclosure of identity would be contrary to the protections of the Act; or (b) where exercise of the right would prejudice the effective follow-up, including any investigation, of the relevant wrongdoing.

APPENDIX D- Glossary

- **Protected Disclosure/Whistleblowing-** refers to a situation where a person who is in a work-based relationship with an organisation discloses information in relation to wrongdoing that the person has acquired in the context of current or past work-related activity
- **Worker/Reporting Person-** a person making a protected disclosure
- **Making a report/disclosure-** disclosing information in relation to alleged wrongdoing in accordance with the Act
- **Penalisation-** includes dismissal and any act or omission causing detriment to a reporting person
- **Person concerned-** persons alleged to be involved in or otherwise connected with the wrongdoing reported.
- **Facilitators-** persons who assist the reporting person in making a disclosure
- **Designated person-** person responsible for operating the internal reporting channel available to workers making a disclosure