

# Guidance under section 21(1) of the Protected Disclosures Act 2014 for the purpose of assisting public bodies in the performance of their functions under the Act

Government Reform Unit

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# Guidance under section 21(1) of the Protected Disclosures Act 2014 (the “2014 Act”) for the purpose of assisting public bodies in the performance of their functions under that Act

## **A. INTRODUCTION**

- 1 Making a protected disclosure refers to a situation where a worker discloses information in relation to wrongdoing. This is sometimes referred to as “whistleblowing”. For the purposes of this Guidance such a worker is referred to as a “worker” or “discloser” and disclosing information in relation to alleged wrongdoing in accordance with the 2014 Act is referred to as “making a protected disclosure”.
- 2 The 2014 Act provides specific remedies for workers who are penalised for making a protected disclosure. For the purpose of this Guidance the term “penalisation” includes dismissal and causing detriment to a worker, and can relate also to the actions of co-workers. A person to whom a protected disclosure is made is obliged under the Act to protect the identity of the discloser.<sup>1</sup> The Act provides significant forms of redress for penalisation and other loss.

## **B. THE LEGAL BASIS FOR THE GUIDANCE**

- 1 Section 21(1) of the 2014 Act provides that:  
  
*“Every public body shall establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures.”*
- 2 Subsection (3) allows the Minister for Public Expenditure and Reform to issue guidance to assist public bodies in the performance of their functions under subsection (1). This Guidance is issued under subsection (3) and the aim is to assist public bodies when establishing and maintaining procedures for the making of protected disclosures and for dealing with such disclosures (referred to in this Guidance as “Procedures”). Subsection (4) provides that public bodies *“shall have regard to”* this Guidance when establishing and maintaining such Procedures.

## **C. KEY PRINCIPLES INFORMING THE GUIDANCE**

- 1 The following key principles inform this Guidance:
  - 1.1 All disclosures of wrongdoing in the workplace should, as a matter of routine, be the subject of an appropriate assessment and / or investigation and the identity of the discloser should be adequately protected; and

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<sup>1</sup> The 2014 Act sets out specified exceptions.

- 1.2 Providing that the worker discloses information relating to wrongdoing, in an appropriate manner, and based on a reasonable belief, no question of penalisation should arise.
- 2 If those two principles are respected, there should be no need for disclosers to access the protections and redress contained in the 2014 Act.

#### **D. BENEFITS OF PROCEDURES**

- 1 Putting in place appropriate Procedures is central to encouraging workers to make disclosures directly to their employer rather than to a person outside the public body.
- 2 Internal disclosures facilitate public bodies in, for example:-
  - deterring wrongdoing in the public service;
  - ensuring early detection and remediation of potential wrongdoing;
  - reducing the risk of leaking of confidential information;
  - demonstrating to interested stakeholders, regulators and the courts that the public body is accountable and managed effectively;
  - improving trust, confidence and morale of workers in the public body;
  - building a responsible and ethical organisational culture; and
  - limiting the risk of reputational and financial damage.
- 3 Having appropriate Procedures in place is also a factor that a Court or Adjudication Officer may consider when hearing a protected disclosure claim and when determining if it was reasonable for a worker to make an alternative external disclosure. See paragraph **E.9.2.2(e)** below for further information on alternative external disclosures.
- 4 Having appropriate Procedures in place provides a safe platform for workers who wish to make a protected disclosure to do so in the confidence that they enjoy the protections of the 2014 Act.

#### **E. PROTECTED DISCLOSURES PROCEDURES – A DETAILED ANALYSIS**

##### **1 Responsibility**

- 1.1 Overall responsibility for Procedures should rest with the relevant Board of the public body, the Management Board of a Government Department or the equivalent person or body.
- 1.2 Day-to-day responsibility for Procedures should be delegated to an appropriate function of the public body with the requisite knowledge and expertise to operate the Procedures correctly. This is a matter for individual public bodies to consider in the context of their own particular structures and resources.

##### **2 Policy statement**

- 2.1 Each public body should incorporate as part of its Procedures a succinct policy statement confirming the Board / Management commitment to creating a workplace culture that encourages the making of protected disclosures and provides protection for disclosers. The policy statement should also cover the workplace disclosure options available and the protections available for disclosers.

### 3 **Application**

- 3.1 The Procedures should set out clearly to whom they apply. The Procedures should apply to all workers as defined in section 3 of the 2014 Act, which includes current and former employees, independent contractors, trainees and agency staff.
- 3.2 While the 2014 Act applies to workers and does not include volunteers within that definition, volunteers may disclose wrongdoing and the public body should consider how any such disclosures will be dealt with, any protections that may be appropriate for volunteers in such circumstances and how they will be made aware of any risks that may arise for them in making a disclosure. Public bodies should confirm in their Procedures that any disclosures from volunteers will be appropriately assessed and / or investigated.
- 3.3 Legal advisors, where information comes to their attention while providing legal advice, are excluded from the protections of the Act.<sup>2</sup> 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 **What is a protected disclosure? (Section 5)**

([www.irishstatutebook.ie/eli/2014/act/14/section/5](http://www.irishstatutebook.ie/eli/2014/act/14/section/5))

- 4.1 A protected disclosure, in the 2014 Act, is a disclosure of information which, in the reasonable belief of the worker, tends to show one or more relevant wrongdoings; came to the attention of the worker in connection with the worker's employment; and is disclosed in the manner prescribed in the Act.
- 4.2 The Procedures should contain guidance on what is meant by the following terms:

### 5 **Relevant wrongdoings (section 5(3))**

- 5.1 Relevant wrongdoings include:

- (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.

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<sup>2</sup> Section 5(6) of the Protected Disclosures Act 2014

- 5.2 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 Disclosures may also be made by workers of wrongdoing in respect of other relevant employment-specific or profession-specific obligations, which may not be covered by the definition of wrongdoing in section 5 of the 2014 Act and may be covered by other statutory protection for disclosures. The public body should consider the extent to which it is necessary to include reference to disclosures that tend to show relevant employment-specific or profession-specific wrongdoing and, if this is necessary, any other statutory protections and requirements that apply to such disclosures; any appropriate internal protections to be provided for disclosures that are not provided for by statute; and how disclosers in such circumstances may be made aware of any risks that may arise for them.
- 5.4 The term “wrongdoing” or “wrongdoings” referenced in these Guidelines is to be taken to refer to one or more of the relevant wrongdoings referenced in section 5 of the 2014 Act and paragraph 5.1 of this Guidance.

## **6 Disclosure of information**

- 6.1 A protected 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 on the basis of a suspicion that is not founded on anything tangible.
- 6.2 Workers should be informed in the Procedures that they are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. All workers need to do, and should do, is disclose the information that they have, based on a reasonable belief that it discloses a wrongdoing and, where the information relates to individuals, that it is necessary to disclose that information.

## **7 Reasonable belief**

- 7.1 A worker must have a reasonable belief that the information disclosed shows, or tends to show, wrongdoing. 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.
- 7.2 It may be quite reasonable for a worker to believe that a wrongdoing is occurring on the basis of what he or she observes. A worker may not know all the facts of the case and as noted above at paragraph 6.2, the worker is not obliged to find proof of his / her 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.
- 7.3 The Procedures should confirm that no worker will be penalised simply for getting it wrong, so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

## **8 In connection with their employment**

- 8.1 The information must come to the attention of the worker in connection with his / her employment, but a disclosure of any wrongdoing which is the worker’s, or the worker’s

employer's, function to detect, investigate or prosecute does not come within the terms, or attract the protections and redress, of the 2014 Act.<sup>3</sup>

## **9 Making a protected disclosure**

9.1 The Procedures should include guidance on how a worker should make a protected disclosure and what it means to make a protected disclosure in a manner prescribed by the 2014 Act (both internally to the employer and externally to other persons). The Procedures should make it clear that the worker must make a disclosure in the manner set out in the Act to gain the protections of the Act and that higher standards apply when the protected disclosure is made externally.

9.2 Under the 2014 Act, protected disclosures can be made in the following ways:

### **9.2.1 To the employer**

It should be possible in most, if not all cases, for workers to make protected disclosures internally to their employer. While public bodies cannot oblige workers to make a protected disclosure internally before making it externally, the Procedures should encourage workers to do so. It should be confirmed that internal disclosures will be taken seriously and the worker making the disclosure will receive appropriate protection.

Public bodies should state in the Procedures to whom protected disclosures should be made within the public body. The public body can suggest that workers make a protected disclosure to their line manager, as they would with any other concern, if the public body feels that this is appropriate. However, workers may not always feel comfortable making a protected disclosure to their line manager (for example, if the worker is of the opinion that the line manager may be involved in the wrongdoing or if the worker feels that a previous report has not been addressed adequately or at all). For this reason, the Procedures should allow a worker to report wrongdoing to an alternative disclosure recipient or recipients specified in the Procedures. Any person authorised or prescribed by law to receive a protected disclosure, is referred to in this Guidance as a "recipient" or "disclosure recipient".

If possible the disclosure recipient(s) should include individuals who would normally be viewed as being part of "independent" functions typically outside any part of normal line management responsibility. In any event, the disclosure recipient(s) should be trained in the Procedures, and should be persons of authority within the public body.<sup>4</sup>

### **9.2.2 Disclosure outside of the employer**

The 2014 Act allows workers to make a protected disclosure to persons other than their employer in certain circumstances. Different requirements need to be met in different cases, as set out at (a) to (e) below. Information in relation to the options available and the requirements of each option should be set out in the Procedures:

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<sup>3</sup> Unless it involves an act or omission on the part of the employer.

<sup>4</sup> The 2014 Act also allows an employer to nominate a specialist third-party to receive protected disclosures on behalf of the employer. A market consultation process is currently being carried out by the Office of the Government Procurement to assess the case for centralised procurement of such services. The specific scope of the third-party role will be examined on the basis of the outcome of the market consultation and consultation with public bodies and Guidance will be developed and issued to public bodies by the Department of Public Expenditure and Reform on this subject in due course.

**(a) Other responsible person**

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 339 of 2014<sup>5</sup> ("SI 339") to receive protected disclosures ("prescribed persons"). This includes the heads or senior officials of a range of statutory bodies.

A worker may make a protected disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under SI 339. However, the 2014 Act also provides an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

Public bodies should consider specifying in the Procedures any person or matters prescribed under SI 339 where such person or matter is relevant to the particular public body, as well as referring to that SI to enable a worker to identify the prescribed person for any other wrongdoing not relevant to the particular public body, but which has come to the attention of the worker in connection with his / her employment.

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

If a worker is or was employed in a public body, the worker may make a protected disclosure to the Minister on whom any function related to the public body is conferred or imposed by or under any enactment.

In the Procedures, the public body should identify the Minister with primary statutory functions in relation to that body.

**(d) A legal adviser**

The 2014 Act allows a protected disclosure to be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in section 6 of the Trade Union Act 1941).

**(e) Alternative external disclosures (in very limited circumstances) (section 10)**

The Procedures should confirm that it is preferable in most circumstances to disclose to the employer and, if that is not appropriate, to use one of the options at (a) to (d) above. The Procedures should explain that there are stringent requirements for alternative external disclosures to qualify as protected disclosures under section 10 of the 2014 Act.

**9.2.3 Disclosure in the area of law enforcement, security, defence, international relations and intelligence (sections 17-18)**

The 2014 Act makes particular provision for disclosures in the areas of law enforcement, security, defence, international relations and intelligence. Detailed information pertaining to

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<sup>5</sup> As amended by Statutory Instrument 448 of 2015

these particular provisions should be included in the Procedures of public bodies to which they are relevant.

## **10 Protection against penalisation (including dismissal and detriment)**

- 10.1 As noted above in paragraph A.2, specific remedies for workers who are penalised for making a protected disclosure are provided for in Part 3 of the Act.
- 10.2 The definition of penalisation in section 3(1) of the Act is very comprehensive and this should be included in the Procedures.
- 10.3 Procedures should include a commitment that penalisation of workers who make a disclosure will not be tolerated and workers who feel that they are being subjected to adverse treatment should report the matter immediately to management. The Procedures should further contain a commitment to assess / investigate such notifications and to take appropriate action (which may include disciplinary action against supervisors and co-workers) where necessary.

## **11 Confidentiality / protection of identity**

- 11.1 The Procedures should confirm that the 2014 Act imposes an obligation to protect the identity of the discloser and set out the extent of that obligation. It is important that public bodies address document security, IT, digital and manual filing in the context of fulfilling the confidentiality obligation in the individual public body and within its systems.
- 11.2 Where action is to be taken following a protected disclosure, it is recommended that a process is 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.
- 11.3 Where it is decided that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser should be informed of this decision in advance of the disclosure, except in exceptional cases. The discloser should also be informed of the applicable review process, which may be invoked by the discloser in respect of this decision.
- 11.4 A public body's Procedures should include an assurance that the identity of the discloser must be protected under the Act, with the exception of a number of specific cases. These may arise where:
  - (a) The disclosure recipient shows that he / she took all reasonable steps to avoid such disclosure;
  - (b) The disclosure recipient has a reasonable belief that the discloser did not object to their identity being disclosed;
  - (c) The disclosure recipient had a reasonable belief that it was necessary for:
    - (i) The investigation of the wrongdoing concerned,
    - (ii) To prevent serious risk to the security of the State, public health, public safety or the environment, or
    - (iii) The prevention of crime or prosecution of a criminal offence; or
  - (d) Where the disclosure is otherwise necessary in the public interest or is required by law.



Procedures should also include a request that workers who are concerned that their identity is not being protected notify their employer, a commitment to assess / investigate such notifications and a commitment to take appropriate action where necessary.

## **12 Anonymous disclosures**

- 12.1 A public body's Procedures should draw attention to the 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 2014 Act. Public bodies should give a commitment that they will be acted upon to the extent that this is possible, while recognising that they may be restricted in their ability to investigate the manner in the absence of the knowledge of the identity of the discloser.
- 12.2 While affording appropriate consideration to an anonymous disclosure, public bodies should also make it clear that important elements of the public body's Procedures (e.g. keeping the discloser informed and protecting a discloser from penalisation) may be difficult or impossible to apply unless the worker's anonymity lifts. The Procedures should also make it clear that a worker cannot obtain redress under the 2014 Act without identifying themselves.

## **13 Personal complaints vs protected disclosures**

- 13.1 The 2014 Act is intended to deal with disclosures of relevant wrongdoing as defined in the Act rather than personal employment complaints or, as set out in the Act, a failure by a person (such as the public body) to comply with the worker's contract of employment, work or services. The Procedures should confirm the distinction between a personal employment complaint and a protected disclosure. The Procedures should also confirm that the Procedures are not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures.
- 13.2 Personal employment complaints should generally be dealt with under the internal grievance, or dignity at work, procedures. 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 grievance (or equivalent) procedure. 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 (or equivalent) procedure.
- 13.3 If a complaint is made of penalisation contrary to the 2014 Act, then that complaint will be dealt with, having regard to the continued obligation to protect the identity of the discloser under the Act.

## **14 Motivation**

- 14.1 The Procedures should confirm that motivation is irrelevant when determining whether or not it is a disclosure protected by the 2014 Act. All protected disclosures should be dealt with regardless of the worker's motivation for making the disclosure, and the worker should be protected so long as the worker reasonably believes that the information disclosed tended to show a wrongdoing.
- 14.2 However, a disclosure made in the absence of a reasonable belief will not attract the protection of the 2014 Act and, may result in disciplinary action against the discloser. In

addition, disclosure of a wrongdoing does not necessarily confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing.

## 15 **Assessment and investigation**

- 15.1 When a disclosure of alleged wrongdoing is made, an initial examination involving a screening assessment should be undertaken. This screening process should be referred to in the Procedures.
- 15.2 The screening process should involve an assessment of the disclosure to seek to determine whether or not it should be treated as a protected disclosure, having regard to the provisions of the 2014 Act. If it is unclear whether the disclosure qualifies as a protected disclosure, the recipient should 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.
- 15.3 It may be necessary, as part of the screening process, to differentiate between protected disclosures and personal employment complaints. In some cases the information provided may involve a personal employment complaint and a protected disclosure. For instance, a worker may allege that a colleague is bullying the worker and also allege that the colleague is defrauding the public body. The disclosure should be assessed to determine the nature of the information disclosed and the procedure or procedures that is / are most appropriate to be used to investigate the matter.
- 15.4 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. If, having assessed the disclosure, it is deemed to relate solely to a personal employment complaint then the discloser should be encouraged to utilise other processes (for example, the grievance or dignity at work policy) so that that complaint can be dealt with in an appropriate manner. If, having assessed the disclosure, there is a mix of different issues (some involving a protected disclosure, some involving a personal employment complaint) then an appropriate process / processes should be applied to deal with the issues. The process to be applied may differ from case to case.
- 15.5 The risk assessment should consider whether the alleged wrongdoing is something that can or should be investigated or not, and, if so, what steps should be taken as part of such an investigation. If an investigation is required, the public body should 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, or an external investigation by another body.
- 15.6 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.
- 15.7 The incorporation of a detailed and prescriptive investigative process in the Procedures may impede the public body's ability to respond flexibly and in a responsive way to disclosures of wrongdoing. Specific timeframes may also create a difficulty as the nature of protected disclosures are such that they will range from being quite simple and relatively easy to assess / investigate to being quite complex and cumbersome, thus requiring a much more substantial period of time to carry out an investigation.

15.8 However, public bodies should consider including in the Procedures a general framework for investigation procedures, with a set of guiding principles to ensure some consistency in terms of approach.

15.9 Each public body should also ensure that any complaint of penalisation or breach of confidentiality is assessed and / or investigated as appropriate.

## **16 Protection of the rights of Respondents**

16.1 Where an allegation is made against an individual (the Respondent), it is important to ensure that the Respondent is afforded appropriate protection. While the procedures for dealing with allegations against an individual will reflect the varying circumstances of public bodies, such procedures must comply with the general principles of natural justice and fair procedures, as appropriate.

16.2 In many cases, the Respondent's right to fair procedures may include a right to challenge the evidence against him / her. This right will need to be balanced against rights contained in the 2014 Act, such as the discloser's right to have his / her identity protected (which is, nevertheless, not absolute and may not be applied, for example, in cases where the disclosure recipient reasonably believes that this is necessary for the effective investigation of the wrongdoing concerned). This will be a particular challenge where a protected disclosure is made anonymously.

16.3 Whether it is necessary to disclose the identity of the discloser, or not, will depend upon the facts of the case, which may include, for example, whether any allegation is made against an individual and the nature of that allegation. The disclosure recipient will need to consider such matters when determining whether a protected disclosure can be investigated and the nature of any investigation. Persons making a protected disclosure should be encouraged to frame it in terms of information that has come to their attention rather than seeking to draw conclusions about particular individuals or specific offences.

16.4 While an investigation under the Procedures is different to a grievance, dignity at work or disciplinary investigation, there are certain key themes and common features and the nature of any investigation under the Procedures will be informed by the procedures that normally apply in the public sector body when other allegations are investigated. The public body will need to be mindful that, if the investigation comes to the conclusion that some form of wrongdoing has occurred, the report that issues may need to be used in a subsequent disciplinary process. As a result, it should be able to withstand scrutiny as part of any disciplinary process and there should, where possible, be strong commonality of approach between such procedures.

## **17 Disciplinary record of discloser and other related matters**

17.1 Where a worker makes a disclosure of alleged wrongdoing it should be given appropriate consideration, in line with the public body's Procedures. The public body should 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).

17.2 In general where a protected disclosure is made during an investigation, disciplinary or other process, this should 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. This should be confirmed in the Procedures.

## **18 Feedback**

18.1 The overriding requirement when providing feedback is that no information is communicated that could prejudice the outcome of the investigation or any action that ensues (e.g.

disciplinary, or other legal action, including prosecution) for example, by undermining the right to fair procedures enjoyed by the person against whom a report or allegation is made.

- 18.2 Subject to 18.1, workers making protected disclosures should be provided with periodic feedback in relation to the matters disclosed and be advised when consideration of the disclosure is complete, except in exceptional cases. This does not require the public body to give a complete account of what the situation is at a particular point in time in terms of progress, but public bodies should generally give reassurance and affirmation that the matter is receiving attention.
- 18.3 Any information and feedback should be provided in confidence. There is no obligation to inform the discloser of the progress, or outcome, of any disciplinary process involving another worker which may arise on foot of an investigation occasioned by a protected disclosure. In general, such information is confidential between the employer and the worker who is the subject of a disciplinary process. A discloser should be informed that appropriate action has been taken but is not generally entitled to know what that action was.
- 18.4 In the absence of appropriate feedback there is a risk that a worker will perceive that the disclosure is not being dealt with adequately, with sufficient speed, or at all. Apart from the potential adverse impact on the credibility of the public body's protected disclosures procedure, such a situation increases the possibility that the worker will raise the issue again, this time outside of the public body. If the public body does not take action that might be reasonably expected to be taken, a Court or Adjudication Officer may consider this when determining if it was reasonable for that worker to make a disclosure in respect of the matter outside of the organisation.

## 19 **Support and advice**

- 19.1 All public bodies should give consideration to strategies for providing appropriate advice (which for the avoidance of doubt does not include legal advice) and support, such as access to Employee Assistance Programme (or equivalent services), to workers who make disclosures of wrongdoing. Information should be provided in the Procedures on the support available that may be of assistance to a worker.

## 20 **Review**

- 20.1 The Procedures should allow for a system of review in respect 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.
- 20.2 Any review should 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 should be offered a review before his / her identity is disclosed.
- 20.3 The review process included in the Procedures should ensure that there is no entitlement to two reviews in respect of the same issue.

## 21 **Consultation & provision of information & training**

- 21.1 It is recommended that each public body consults with management and staff representatives in developing its Procedures having regard to this Guidance.

- 21.2 The 2014 Act provides that the public body must provide workers employed by the body with written information relating to the Procedures. In addition to providing a copy of the Procedures to its workers, it is also recommended that the public body communicates the existence of the Procedures appropriately.
- 21.3 Where a substantial or significant level of work is carried out by contractors, public bodies should consider engaging with the employing body (if any) in order to encourage the contractor to also put in place its own Procedures if they do not already have one in place.
- 21.4 Public bodies should remind workers of the existence of the Procedures and workers should be informed if, and when, changes are made to the Procedures.
- 21.5 General awareness training should be provided to workers including those who may be dealing with protected disclosures.
- 21.6 New workers joining the public body should be informed during induction training or otherwise of the existence and terms of the Procedures.

## **22 Central oversight / co-ordination of information**

- 22.1 In each public body there should be a point (or points) of contact for co-ordination of information and case management so that information on protected disclosures can be managed and collected in order, inter alia, to meet the body's obligations under Section 22 of the 2014 Act to report annually and to maintain oversight of how protected disclosures are dealt with. The point (or points) of contact should be at an appropriate level.
- 22.2 Public bodies should put an appropriate case management system in place to record and track protected disclosures. The case management system should ensure that there is effective monitoring of how many protected disclosures are being made; what investigation or other action is being taken; any penalisation of disclosers and any steps taken to mitigate against penalisation; and whether the Procedures are effective at encouraging disclosers to come forward.
- 22.3 All disclosures assessed as protected disclosures, irrespective of whether they are being dealt with formally or informally, should be recorded and notified to the appropriate point of contact.

## **23 Adaptation of Procedures - Evaluation and Review**

- 23.1 Procedures introduced in a public body should be tailored to the needs of the particular public body taking into account the specific responsibilities, powers and requirements of that body. As is the case for any policy applicable to workers, the Procedures should be clear and accessible and should use simple language.
- 23.2 The control functions of the public body (such as Internal Audit or Compliance) should monitor the operation of the Procedures on an ongoing basis and report to the Audit Committee or equivalent on their findings. Such monitoring should not be conducted by the same person / area that has responsibility for the operation of the Procedures.
- 23.3 It is also recommended that senior management and the appropriate governance bodies of each public body carry out periodic reviews at least annually, and evaluate the Procedures where appropriate.

## **24 Non-restriction of rights to make protected disclosures**

- 24.1 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. This should be explained in the Procedures.

**25 Mandatory reporting**

25.1 The 2014 Act does not oblige a worker to make a protected 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 and any relevant mandatory reporting requirements should be dealt with where necessary and appropriate in separate and distinct policies and procedures.

**26 The information that should be provided in a disclosure**

26.1 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.

26.2 A list of the details that it is recommended should be included in a disclosure is to be found at Appendix A of this Guidance. A similar list should be included in any Procedures. All records of disclosures should be securely maintained so as to comply with the requirements of confidentiality under the 2014 Act and with relevant obligations under Data Protection legislation.

**F REVIEW OF THIS GUIDANCE**

1 This Guidance will be reviewed by the Minister for Public Expenditure and Reform in light of the experience of public bodies in dealing with disclosures under the 2014 Act. Any feedback or queries you have should be directed to [protected-disclosures@per.gov.ie](mailto:protected-disclosures@per.gov.ie)

**Note: This Guidance has been produced for information purposes only.** It does not impose any legal obligations in itself, nor is it an authoritative statement of the law, which is set out in the Protected Disclosures Act 2014.

## Appendix A

### 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;
- 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 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 expose the wrongdoing disclosed); and
- h. any other relevant information.