



An tSeirbhís Chúirteanna
Courts Service

Courts Service - Protected Disclosure Policy

The [Protected Disclosures Act 2014](#) came into effect on 15th July 2014. The purpose of the Act is to provide a framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the work place in the knowledge that protections are available to them from any form of penalisation from doing so.

The Courts Service has put in place a policy and procedures through which it is intended to foster a culture and work environment within which workers are encouraged and supported in making reports in the knowledge that their concerns will be taken seriously, will be investigated, where appropriate, and that their confidentiality will be respected.

The policy highlights that it is always appropriate to raise concerns where they are based on a reasonable belief irrespective of whether any wrongdoing is in fact subsequently identified.

The policy provides guidance on how to raise concerns and how any matters raised will be processed.

COURTS SERVICE
MAKING PROTECTED DISCLOSURES: POLICY AND PROCEDURES

1. Introduction

1.1 The Protected Disclosures Act 2014 (“the Act”), which came into operation on the 15th July 2014 and may be viewed at

<http://www.irishstatutebook.ie/2014/en/act/pub/0014/>

facilitates workers in raising a concern regarding wrongdoing or potential wrongdoing in the workplace by providing them with certain forms of protection from action which might be taken against them for doing so.

1.2 The Act provides for different methods of protected disclosure depending on the circumstances, as set out in Part 2 of the Act.

1.3 The Act protects disclosures by workers, which include current or former employees, contractors, consultants, trainees, agency staff and interns.

1.4 This document sets out the Courts Service’s policy on protected disclosures and the Courts Service’s procedures required under the Act (“the procedures”) for -

- the making to it of protected disclosures by workers who are or were employed by it and
- dealing with such disclosures.

Guidance as to the steps to be taken by managers receiving disclosures is set out in Appendix A.

2. Key principles underlying our policy on protected disclosures

2.1 The Courts Service is strongly committed to ensuring that the culture and work environment are such that any member of staff is encouraged and supported in raising any issue regarding wrongdoing or potential wrongdoing in the workplace and any matter that may impact adversely on the Courts Service’s ability to carry out its functions.

2.2 A worker who has a reasonable belief that the information contained in his or her disclosure shows or tends to show that wrongdoing covered by the policy has occurred, is occurring or is likely to occur, will be protected from penalisation or other adverse treatment for making a disclosure concerning it even if the worker’s concern is ultimately misguided or mistaken. Incidents of adverse treatment of a person for making a disclosure regarding potential wrongdoing in the workplace may be subject to action under the Civil Service Disciplinary Code.

2.3 Where a worker makes a protected disclosure -

- (a) the concern will be treated seriously and investigated where that is considered appropriate;
- (b) all reasonable steps will be taken to treat the disclosure in a confidential and sensitive manner;
- (c) the person to whom the disclosure is made, and anyone to whom it is referred under the procedures, shall not disclose to another person any information that might identify the person making the disclosure without their consent, unless it is necessary for the effective investigation of the relevant wrongdoing concerned, the prevention of serious risk to the security of the State, public health, public safety or the environment, or the prevention of crime or prosecution of a criminal offence;
- (d) the person raising the concern will be advised on how the issue has been addressed, including the outcome of any investigation;
- (e) the person raising the concern will not be disadvantaged in any way for having made the disclosure, even if no wrongdoing is identified, provided the concern was based on a reasonable belief; and
- (f) any investigation arising from a disclosure will be carried out in a manner which is fully consistent with existing investigatory procedures which embody the principles of natural justice.

3. Disclosure not covered by the policy and procedures

The policy and procedures do not apply to-

- (a) to personal complaints or personal grievances. Procedures for dealing with grievance problems are available at <http://hr.per.gov.ie/grievance/>
- (b) disclosures where the worker knowingly conveys false, misleading, frivolous or vexatious information. If it transpires that a worker makes a disclosure, which they know to be false or do not believe to be true the Courts Service may take disciplinary or other appropriate action.

4. Other Courts Service policies

The policy and procedures should be read in conjunction with any other Courts Service policies (e.g. the Courts Service Fraud Policy, Courts Service Computer Usage Policy, etc.) which may be relevant to the disclosure concerned.

5. Disclosure covered by the policy and procedures

The policy and procedures apply to disclosures by a worker of information which the worker reasonably believes tends to show one or more of the wrongdoings set out below, which came to the attention of the worker in connection with his or her employment, has occurred, is occurring or is likely to occur:

- Commission of a criminal offence
- A failure to comply with a legal obligation (except one arising under the worker's contract of employment or a contract obligating the worker to do or perform personally any work or services)
- A miscarriage of justice
- The endangering of an individual's health or safety
- Damage to the environment
- Unlawful or improper use of funds or resources of a public body, or of other public money
- That an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement
- Concealment of destruction of information tending to indicate any of the wrongdoings above mentioned.

6. Making a disclosure

6.1 It is to be expected that concerns in relation to day to day operational matters will, in the normal course of events, be brought to the attention of the relevant line manager and dealt with accordingly, and this policy and the procedures are not intended to act as a substitute for normal day to day operational reporting.

6.2 Any current or former worker (as defined above) who has a reasonable belief that one or more of the wrongdoings set out at paragraph 5 above is occurring or is likely to occur, should, in the first instance, disclose the relevant information to the Principal Officer with responsibility for the office or unit, or to the Regional Manager for the region in which he or she works or worked.

6.3 Where the individual making the disclosure feels unable to make the disclosure to his/her Principal Officer/Regional Manager, he/she may alternatively make the disclosure to the relevant Head of Directorate.

6.4 Where the discloser is at Principal Officer level he/she should make the disclosure to his/her line Head of Directorate, another member of the Senior Management Team or to the Chief Executive Officer. Where the discloser is at Head of Directorate level he/she should make the disclosure to the Chief Executive Officer.

6.5 The disclosure under this policy should preferably be made in writing to ensure that all the relevant information is made available at the time the disclosure is made. This will facilitate the assessment as to whether the disclosure warrants investigation. The specific nature of the potential wrongdoing should be communicated at the time the disclosure is made.

6.6 While a disclosure may be made anonymously, it should be noted that the extent to which this policy can be applied and implemented is significantly restricted in the case of anonymous disclosures.

6.7 A staff member intending to make a disclosure should not carry out investigation outside of the normal scope of his/her duties with a view to seeking to confirm any perceived wrongdoing.

7. Receiving a Disclosure

7.1 The recipient of a disclosure under this policy, and any other person to whom the disclosure is referred in the performance of that person's duties, must take all reasonable steps to avoid disclosing to another person any information that might identify the person by whom the disclosure was made.

7.2 The recipient of a disclosure should undertake an initial evaluation following which he/she will advise the discloser as to whether the matter requires an investigation. In the event that the recipient is of the view that any further investigation is not required the recipient should advise the discloser of his/her assessment and the basis for the assessment, insofar as is possible.

7.3 In the event that the discloser is not satisfied with a decision of the recipient not to pursue the matter further he/she may, if they so wish, bring the matter to the attention of a member of the Senior Management Team stating that the matter has already been considered by another officer and outlining the reasons as to why he/she feels that the matter requires investigation.

7.4 In the event that the concerns are referred to a second recipient that person will undertake an independent evaluation of the matter following which he/she will advise the discloser and the first recipient as to whether a more detailed investigation is considered appropriate. A decision of a second recipient not to pursue the matter will represent a final Courts Service decision on the matter.

7.5 All persons who are in receipt of a disclosure protected by the Act must advise the Principal Officer in Charge of the Office of the Chief Executive Officer of the receipt of the disclosure, the nature of the information contained in the disclosure and the decision transmitted to the discloser, using the form set out in Appendix B.

7.6 As it is not possible to know at the time whether a disclosure will subsequently be deemed protected under the Act the recipient should keep a written record of his/her actions, including timelines, under this section and provide same to the Principal Officer in Charge of the Office of the Chief Executive Officer.

8. Investigation of a Disclosure

8.1 Where the recipient of a disclosure forms the view that an investigation is required, an investigation should be immediately initiated. Depending on the nature of the disclosure, the recipient of the disclosure may decide to conduct the investigation themselves or may consider referring the matter to a colleague at the same grade or to a more senior official. The fact of such an investigation will be reported to the Head

of Internal Audit and the Chief Executive Officer both of whom will also be advised of the outcome and any recommendations arising.

8.2 Any investigation arising as a consequence of a disclosure will, as with all other internal investigations, be carried out in a manner which is fully consistent with existing investigatory procedures which embody the principles of natural justice.

8.3 It is not possible to lay down precise timescales or steps required for investigations, as this will depend on the nature of the issues raised. Without affecting the quality or depth of the investigation all reasonable speed will be taken to bring any investigation arising from the making of a disclosure by a staff member to a conclusion as speedily as possible in all the circumstances of the case.

8.4 If, following the investigation into the matter, no wrongdoing is found to have occurred and the discloser is assessed not to have had a reasonable belief in making the allegation of wrongdoing the matter will be referred to the Personnel Officer with a view to considering whether disciplinary proceedings ought to be pursued against the person concerned.

8.5 As it is not possible to know at the time whether the disclosure will subsequently be deemed protected under the Protected Disclosures Act written records, including timelines, in relation to any investigation undertaken under this section should be maintained. Records of concerns raised, including the outcome, will be maintained for a minimum of five years after the closure of the case by the Principal Officer in charge of the Office of the Chief Executive Officer. These records will be maintained in a confidential and secure environment.

8.6 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. Where the recipient is of the view that the seriousness of the matters reported, require the investigation to be carried out externally or by An Garda Síochána, this should be notified immediately to the Chief Executive Officer.

9. External disclosures

The 2014 Act allows a worker to make a protected disclosure to persons other than their employer in certain circumstances, as set out at (a) to (e) below.

(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 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 of 2014. However, in this case the worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

(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 case of the Courts Service the Minister for Justice and Equality exercises primary statutory functions (under the Courts Service Act 1998) in relation to that body.

(d) A legal adviser

A protected disclosure may 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 of the Act provides that a protected disclosure may be made to recipients other than those mentioned above if the worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true, the disclosure is not made for personal gain, any one or more of the detailed conditions set out in section 10(2) of the Act are met and in all the circumstances of the case, it is reasonable for the worker to make the disclosure.

In determining whether it is reasonable for the worker to have made the disclosure, regard is to be had to the factors set out in Section 10(3) of the Act.

10. Protection from penalisation

10.1 The Courts Service confirms that no staff member who has a reasonable belief in the occurrence of a serious wrongdoing in the Courts Service and makes a disclosure in relation thereto will be penalised for the making of that disclosure, even if no investigation subsequently takes place, or where an investigation does take place and the investigation finds that no wrongdoing occurred. This undertaking extends to any other staff member who is required to provide information in relation to matters raised as a consequence of the disclosure.

10.2 If a staff member believes that he/she has been penalised for the making of a disclosure of wrongdoing in accordance with this policy they should inform their Principal Officer, Head of Directorate, the Head of Internal Audit or the Chief Executive Officer, as appropriate.

11. Review

11.1 Responsibility for the review of the operation of this policy lies with the Chief Executive Officer of the Courts Service.

11.2 The Head of Internal Audit should report to the Chief Executive Officer and the Audit Committee on an annual basis on the operation of the policy, or more frequently if he or she considers it appropriate.

12. Further information

This document will be reviewed and updated following the issue of Guidelines by the Department of Public Expenditure and Reform under section 21 of the Protected Disclosures Act 2014 in relation to the establishment and maintenance of internal procedures for the making of protected disclosures by workers who are or were employed by public bodies.

Date of policy	February 2016	Review date	July 2017
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APPENDIX A

Procedure to be followed by managers in dealing with disclosures

All reported disclosures about perceived wrongdoing in the workplace must be treated seriously. The manager to whom a concern is disclosed should:

1. ensure that (s)he is thoroughly familiar with the current version of the Courts Service's policy and procedures on the making of disclosures (see above).
2. record the disclosure and the steps taken to deal with it.
3. where necessary, seek clarification from the worker on any aspect of the disclosure which is unclear.
4. assess whether the disclosure should be treated as a protected disclosure and, where satisfied that it is not a protected disclosure, encourage the discloser to utilise other processes (e.g. a grievance procedure, where appropriate) so that that complaint can be dealt with in an appropriate manner. If it is unclear whether 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.
5. 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.
6. decide whether, having regard to the nature of the disclosure and any other policy of the Courts Service, he or she should personally conduct the investigation or should refer the matter to a colleague at the same grade or (as may be required by the Courts Service Fraud policy, where relevant) to a more senior official within the Courts Service.
7. where the disclosure indicates that a criminal or other external investigation is warranted, ensure that the matter is reported to An Garda Síochána or, as the case may be, such other body as may have the statutory power and function of investigation of the matter.
8. (where the manager is conducting the investigation himself or herself) establish what evidence is available to support the concern.
9. (where the manager is conducting the investigation himself or herself) obtain evidence from any relevant witnesses.
10. take immediate action if the alleged wrongdoing involves a serious loss or danger to others.

11. carry out relevant enquiries promptly, sensitively and discretely, taking all reasonable steps to protect the identity of the maker of the disclosure.
12. (where the manager is conducting the investigation himself or herself) secure any necessary authorisations to the making of inquiries which may be required (e.g. under the Courts Service Computer Usage Policy)
13. if it is necessary to reveal the worker's identity to undertake an effective inquiry, consult with the worker.
14. (where the manager is conducting the investigation himself or herself) take appropriate action if the disclosure is grounded, or , where appropriate, refer the matter to the appropriate official within the Courts Service for action.
15. if the manager forms the opinion that the disclosure is deliberately false , consult the Personnel Officer as to the appropriate steps to be taken.
16. provide written feedback to the worker within 20 working days.
17. report the outcome (see form specified in Appendix B) and forward all records to the Principal Officer in charge of the Office of the Chief Executive Officer.

APPENDIX B
Report of Information Disclosed

To: the Principal Officer in charge of the Office of the Chief Executive Officer

I received and dealt with a disclosure of information, as detailed below:

1. Name of recipient:

2. Name of discloser (if available):

3. Details of the disclosure (attach relevant correspondence):

4. Date of receipt of disclosure:

5. Summary of steps taken on foot of disclosure (attach relevant correspondence / documentation):

6. Decision (and reasons) transmitted to the discloser (attach relevant correspondence):

I confirm that in dealing with the disclosure I have familiarised myself with and adhered to the Courts Service's policy and procedures on the making of disclosures and any other Courts Service policy which may be relevant to the disclosure.

Signed: _____

Date of this report:20..