



Dún Laoghaire-Rathdown County Council

Protected Disclosures External Reporting Policy & Procedures

To Chief Executive of a Local Authority as a prescribed person under SI 367 of 2020

Effective From: January 2023

Policy Owner: Corporate Affairs Department

Revision History			
Release Date	Version	Last Revised By	Approved By
January 2023	1.0	Elizabeth Clarke	Senior Management Team

Section 1 Protected Disclosure Policy – External Reporting

1. Overview

The [Protected Disclosures Act, 2014](#) as amended by the [Protected Disclosures \(Amendment\) Act 2022](#), protects workers in the public, private and not-for-profit sectors if they speak up about or raise concerns relating to wrongdoing in the workplace. Workers can report wrongdoing internally to their employer or externally to a third party, such as a prescribed person.

In 2019, the European Union adopted Directive 2019/1937 on the protection of persons who report breaches of Union Law and an amendment to the existing legislation was required to implement the Directive’s provisions. Updated legislation was also required to take account of the GDPR and amended Freedom of Information legislation.

Consequently, the Protected Disclosure (amendment) Act 2022 was signed into law on the 21st July 2022.

2. Purpose

The primary purpose of the Protected Disclosures legislation is to promote and encourage the development of a positive workplace culture in which raising concerns regarding potential wrongdoing is valued and appropriate action is taken by employers in response to such disclosures. Having appropriate policies and procedures in place provides a safe platform for workers/reporting persons who wish to make a protected disclosure to do so in the confidence that they have the protections of the Act.

Specifically, the key objectives of the legislation are as follows:

- To encourage workers to raise reasonable concerns regarding possible wrongdoing in the workplace so that these concerns can be addressed;
- To underpin a working environment in which the primary focus is on responding to the “message” (i.e. the report of wrongdoing) rather than on the “messenger” (i.e. the worker making the report).
- To reinforce the legal requirement that employers should not penalise a worker who makes a protected disclosure;
- To ensure that a competent and timely assessment and investigation of reports of wrongdoing takes place followed, where necessary, by an appropriate response.

3. Introduction

These procedures outline the process for making a protected disclosure on wrongdoing, as defined in the protected disclosure legislation, to the Chief Executive, Dún Laoghaire-Rathdown County Council as a Prescribed Person, using external reporting channels. Reports can be made internally to the worker’s employer, or externally to a prescribed

person or the Protected Disclosures Commissioner. Dún Laoghaire-Rathdown County Council has a separate procedure for workers who wish to make an internal report.

Section 7 of the Act provides that a worker (reporting person) may make a disclosure to a person designated by the Minister for Public Expenditure and Reform. Such persons are referred to as "prescribed persons". Prescribed persons are designated to receive external protected disclosures by order of the Minister for Public Expenditure and Reform. They are usually the Heads of public bodies that have responsibility for the supervision or regulation of a particular sector. The full list of prescribed persons is available at <https://www.gov.ie/prescribed-persons>. Reports can also be transmitted between prescribed persons or referred to prescribed persons by the Protected Disclosures Commissioner. If a worker is or was employed in a public body, the worker may make a protected disclosure to a relevant Minister. A "relevant Minister" is defined as a Minister with responsibility for the public body concerned in whom functions, whether statutory or otherwise, as respects the public body, are vested, or a Minister of State to whom any such function is delegated. In general, this will be the Minister for the parent department of the public body. As a worker who is or was employed by local authority the relevant minister is the Minister for Housing Local Government and Heritage, Custom House, Dublin

Whilst reporting persons within an organisation are encouraged to make use of internal channels in place to receive protected disclosures there is no obligation on them to do so. Higher standards are applicable if the reporting person makes a report through an external channel as they must believe the relevant wrongdoing is 'substantially true'.

By Statutory Instrument 367 of 2020 the Minister for Public Expenditure and Reform prescribed the Chief Executive of a Local Authority for all matters relating to Dún Laoghaire-Rathdown County Council functions under the Local Government Acts 1925 to 2019 or under any other legislation. To make a disclosure under Section 7 of the Act a worker must reasonably believe that the relevant wrongdoing falls within the description of matters in respect of which the Chief Executive of a Local Authority is prescribed and that the information disclosed, and any allegation contained in it, are substantially true.

This procedure outlines the process for making a protected disclosure on wrongdoing, as defined in the protected disclosures legislation, to the Chief Executive, Dún Laoghaire-Rathdown County Council as a prescribed person, using external reporting channels. and to give effect to the obligations and provisions of the Protected Disclosures Act 2014, as amended by the Protected Disclosures (Amendment) Act 2022.

4. Protected Disclosure Definition

A Protected Disclosure is defined in the legislation as a disclosure of 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.

The following matters are relevant wrongdoings and may relate to matters that are occurring now, have happened in the past or may happen in the future:

- (a) that an offence has been, is being or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services,
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged,
- (f) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,
- (g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or
- (h) that a breach has occurred, is occurring or is likely to occur, or
- (i) that information tending to show any [of the above] has been, is being or is likely to be concealed or destroyed or an attempt has been, is being or is likely to be made to conceal or destroy such information."

5. Definition of Worker (Reporting Person)

For the purposes of the Act, a worker means an individual who has acquired information on a relevant wrongdoing in a work-related context and includes the following:

- a) an individual who is or was a worker,
- b) an individual who entered into or works or worked under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertook to do or perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party's business,
- c) an individual who works or worked for a person in circumstances in which
 - i) the individual is introduced or supplied to do the work by a third person, and
 - ii) the terms on which the individual is engaged to do the work are or were in practice substantially determined not by the individual but by the person for whom the individual works or worked, by the third person or by both of them,

- d) an individual who is or was provided with work experience pursuant to a training course or programme or with training for employment (or with both) otherwise than under a contract of employment,
- e) an individual who is or was a shareholder of an undertaking,
- f) an individual who is or was a member of the administrative, management or supervisory body of an undertaking, including non-executive members (this will include the members of any Board (or similar) appointed to a public body). This includes Elected Members of Dún Laoghaire-Rathdown County Council.
- g) an individual who is or was a volunteer,
- h) an individual who acquires information on a relevant wrongdoing during a recruitment process, and
- i) an individual who acquires information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process referred to in (h) above).

A worker who makes a protected disclosure is described as a reporting person.

6. Reasonable Belief

A reporting person may make a protected disclosure to a prescribed person if the reporting person reasonably believes that the relevant wrongdoing falls within the matters for which the prescribed person is prescribed.

The following conditions must apply to a disclosure to the prescribed person:

- It must have come to the reporting person's attention in a work related context.
- They must have a reasonable belief that the information disclosed shows a wrongdoing.
- They must have a reasonable belief that the information disclosed, and any allegation contain in it, are substantially true.

No reporting person will be penalised for submitting a protected disclosure if it is subsequently established that they were mistaken in their belief that wrongdoing was occurring provided that they had a reasonable belief that the information that was disclosed showed or tended to show wrongdoing.

7. Protections under the Act.

The legislation provides for certain protections for those submitting protected disclosures. These include protections against penalisation and keeping their identity confidential, with certain exceptions. Penalisation and the breaching of confidentiality is a criminal offence.

Examples of penalisation include but is not limited to the following:

- suspension, lay-off or dismissal,
- demotion, loss of opportunity for promotion, or withholding of promotion,
- transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- coercion, intimidation, harassment or ostracism,
- discrimination, disadvantage or unfair treatment,
- injury, damage or loss,
- threat of reprisal,;
- withholding of training;
- a negative performance assessment or employment reference;
- failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that they would be offered permanent employment;
- failure to renew or early termination of a temporary employment contract;
- harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income;
- blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry;
- early termination or cancellation of a contract for goods or services;
- cancellation of a licence or permit, and
- psychiatric or medical referrals

8. Protection from dismissal/penalisation

A reporting person who has a reasonable belief in relation to a serious wrongdoing in connection with their employment and discloses that concern will not be penalised for the making of that disclosure, even if (a) no investigation subsequently takes place, or (b) where an investigation does take place, the investigation finds that no wrongdoing occurred. This undertaking extends to any other worker/reporting person who is required to provide information in relation to matters raised as a consequence of their disclosure.

9. Claims of Penalisation

Complaints of penalisation are separate to the protected disclosure and should be dealt with under HR policies and procedures of the relevant organisation unless this is inappropriate in the circumstances.

External remedies open to reporting persons who believe that they have been penalised include a claim before the Workplace Relations Commission (within 6 months of the penalisation) and the Circuit Court (within 21 days of the last instance of penalisation).

10. Confidentiality

The Prescribed Person/Designated Person who is designated to receive a person's disclosure under this policy and any other worker to whom the disclosure is referred in the performance of that workers/person's duties, must take all reasonable steps to avoid disclosing to another person any information that might identify a worker who has made a protected disclosure.

The following exceptions apply:

- The person to whom the disclosure was made or transmitted shows that they took all reasonable steps to avoid such disclosure.
- The person to whom the disclosure was made or transmitted had a reasonable belief that it was necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment.
- Where the disclosure is otherwise required by law.
- Where the disclosure is a necessary and proportionate obligation imposed by legal principles or the law of the State in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned.

In the circumstances detailed above, the worker will be informed if it becomes clear that it is not possible to maintain their confidentiality unless the notification would jeopardise:

- The effective investigation of the wrongdoing,
- 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.

11. Protection of the rights of the person against whom an allegation of wrongdoing has been made

The principles of natural justice and fair procedures will be complied with as appropriate where an allegation of wrongdoing is made ~~against a worker~~ and the disclosure has been recorded and assessed as to warranting investigation.

In specific terms, in such circumstances, the person against whom the allegation of wrongdoing has been made will be advised of the following in writing:

- i. that an allegation has been made against them (this should be made formally);
- ii. that the disclosure has been recorded and is being formally investigated by a named individual in order to establish the facts;
- iii. that no conclusions have been drawn until the facts have been investigated;
- iv. that they are expected to assist the investigator as far as is reasonably possible;
- v. that the investigator wishes to interview them at a specific time and place
- vi. that they may have a person of their choice present at the interview (i.e. union representative, a colleague, a peer support from their workplace, this may also include in specific circumstances a legal representative);
- vii. they have the right to make a statement in respect of the allegation(s) made against them either orally and/or in writing;
- viii. as far as is reasonably possible, their confidentiality and privacy will be respected.

12. Withdrawal of a protected disclosure

Once a protected disclosure has been made, it is not possible for a reporting person to withdraw the disclosure. Reporting persons are required to co-operate with a designated person, prescribed person, the Commissioner, or a person to whom a report is transmitted.

13. Recording and Tracking of Disclosures

The Council is obliged, by the 1st of March annually, to prepare and publish a report detailing the number of protected disclosures made to the Council in the immediately preceding year and any action taken in response to those protected disclosures. All disclosures of wrongdoing, irrespective of whether they are being dealt with formally or informally, shall be recorded and notified to a Designated Person who will report to the County Chief Executive, as required. The identity of the discloser will remain confidential.

The report shall also include anonymous information in relation to the protected disclosures and the action taken by the Council. This report shall be published in a form that does not enable the identification of the persons involved in any aspect of the disclosure, be they the discloser, or the recipient or any other person involved.

14. Records Management

Records created, maintained, and stored by the Council as part of the Protected Disclosure Policy and Procedures shall comply with the requirements of confidentiality under the 2014 & 2022 Acts and with the National Records Retention Policy (2001) and any other relevant records retention policies.

15. Audit Committee Protocol

The County Council's Audit Committee has adopted a Protocol to provide for referral to the Prescribed Person/Designated Person of any concern raised with the Chair of the Audit Committee. The roles of the Audit Committee (as set in the Local Government (Audit Committee) Regulations 2014 relates to financial matters such as "possible irregularities in financial reporting or other financial matters".

16. Monitoring of the Policy

The Council shall monitor the implementation of and compliance with the policy and will review it on a regular basis.

Section 2 Procedure for the Making of an External Protected Disclosure.

1. Designated Person

The Chief Executive of Dún Laoghaire-Rathdown County Council is the Prescribed Person the reporting of external protected disclosures. The Chief Executive of Dún Laoghaire-Rathdown County Council has appointed the Senior Executive Officer, Corporate Affairs Department as the designated person for receipt of external reporting of protected disclosures. If in writing, the reporting person can email the designated person at the following email address ProtectedDisclosure@dlrcoco.ie or by post: Dún Laoghaire-Rathdown County Council, Protected Disclosures (External), Designated Person, Senior Executive Officer, Corporate Affairs Department, County Hall, Marine Road, Dún Laoghaire, Co. Dublin, A96 K6C9. Reports made orally should be made to: (01) 2054700 ext. 4268. The prescribed person/designated person can also facilitate to meet with the reporting person in person to take an account of their disclosure if they so wish. If a disclosure is made to another employee of the local authority who is not a designated person(s), then the individual receiving the disclosure should advise the discloser to report the matter to the appropriate recipient as set out in this procedure. A local authority may also separately assign overall responsibility for External Protected Disclosures to the Chief Executive.

2. What details should the disclosure include?

A protected disclosure should contain "information" which tends to show wrongdoing. The ordinary meaning of disclosing "information" is conveying facts, such as stating the particular facts of what occurred. This is different to simply making an allegation based on a suspicion that is not founded on anything tangible, however the general context of any statement would need to be assessed to determine if it qualified as a protected disclosure.

At minimum, the disclosure should include the following details:

- a. that the report is a protected disclosure and is being made under the Policy;
- b. the reporting person's name, place of work, position in the organisation and confidential contact details;
- c. the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- d. whether 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, including, 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 you believe this is necessary to expose the wrongdoing); and
- h. any other information the discloser thinks may be relevant.

An External Protected Disclosure form is available in Appendix A or can be downloaded from [Protected Disclosure Reporting Form - External.docx](#) .

While a disclosure may be made anonymously through the appropriate external reporting channels, the extent to which these procedures can be applied and implemented is significantly restricted in the case of anonymous disclosures. It should also be noted that an individual cannot obtain redress under the Act without identifying themselves as part of the process of seeking redress.

The reporting person who raises a concern should not carry out an investigation outside of the normal scope of his/her duties with a view to seeking to confirm relevant wrongdoing. In addition, they are still required to conduct themselves professionally and to continue to carry out their duties as normal.

3. Protected Disclosure Process

3.1. Acknowledgement

The Prescribed Person/Designated Person(s) will acknowledge, in writing, to the reporting person, receipt of the report within seven calendar days of its receipt unless: the reporting person has requested otherwise or the designated person(s) reasonably believes acknowledgement of the receipt would jeopardise the protection of the identity of the reporting person.

The acknowledgment will provide further detail on the following:

- The protected disclosures process,
- Details of next steps,
- Protections afforded the worker submitting the protected disclosure from a protection of identity and penalisation perspective,
- Type of feedback that will/won't be provided.

3.2. Initial Assessment

On receipt of the protected disclosure, an initial assessment of the disclosure will be undertaken by the Prescribed Person/Designated Person to receive protected disclosures. This outcome of the initial assessment be as follows as provided for under the Act.

1. If the disclosure made falls within the scope of matters which fall under the responsibility of the Chief Executive of Dún Laoghaire-Rathdown County Council as a prescribed person. In such circumstances where it does not fall into scope of matters for which the Chief Executive has responsibility, the disclosure is transferred to another prescribed person or the Protected Disclosures Commissioner for assessment and the reporting person is notified in writing of this and the reasons for doing so.
2. If the information is within scope of matters which fall under the responsibility of the Chief Executive of Dún Laoghaire-Rathdown County Council as a prescribed person, but there is no prima facie evidence that a relevant wrongdoing occurred. In such instances the procedure is closed and the reporting person is notified in writing of this and the reasons for doing so.
3. If the information is within scope with prima facie evidence indicating a relevant wrongdoing occurred but the relevant wrongdoing is clearly minor and does not require follow-up. The procedure is closed and the reporting person is notified in writing of this and the reasons for doing so.
4. If the information does or does not contain any meaningful new information about a relevant wrongdoing compared to a previous report (including any report made before the commencement of *section 11* of the *Protected Disclosures (Amendment) Act 2022* (in this clause referred to as a 'past report') made or transmitted to the prescribed person or to any other person in respect of which the relevant procedures (including any procedures that applied at the time any past report was made) were concluded, unless new legal or factual circumstances justify a different follow-up, the procedure is closed and the reporting person is notified in writing of this and the reasons for doing so.

In the event that the Prescribed Person/Designated Person is of the view that the procedure is closed, the reporting person will be advised of this assessment and if a reporting person is not satisfied with the outcome of the initial assessment they can request a review of that decision in writing to the designated person and it will be reviewed in as far as possible by somebody other than the initial decision maker.

5. Where the information is within scope of responsibility of the Chief Executive and after initial assessment, the designated person determines that there is prima facia evidence that a relevant wrongdoing may have occurred, appropriate action will be taken within the functions of the Chief Executive to address the wrongdoing. This will normally involve determining whether the alleged wrongdoing can or should be investigated and if so, what steps should be taken.

3.3 Investigations

If an investigation is required, Dún Laoghaire-Rathdown County Council will consider the nature and extent of the investigation required. This could consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoing, or an external investigation by another body.

The reporting of a protected disclosure to the Chief Executive, as a prescribed person, are likely to involve individual who are not employees of Dún Laoghaire-Rathdown County Council but rather individuals and organisations in the sector(s) the County Council is responsible for regulating or supervising. The Chief Executive will rely on the statutory powers given to them under legislation in order to carry out effective follow up and investigation of disclosures.

Where a report of a disclosure concerns a breach of EU law, as provided for in the Act, the Chief Executive must send the information to the relevant EU bodies as soon practicable, where there is provided for under EU or Irish law.

Where considered necessary, terms of reference, which will determine the scope, and conduct of the investigation will be drawn up. Regardless of the approach taken, the principles of natural justice and fair procedures will apply. Respondents will have the right to know the allegations against them and the right to a fair hearing. This may include a right to challenge the evidence against them. This right will need to be balanced against rights in the legislation, such as the right of the reporting person to have their identity protected.

In general, the respondent's right to representation will be limited to a co-reporting person or trade union representative. There is no automatic right to legal representation at investigation meetings however a right to legal representation may arise in exceptional cases. In such circumstances the respondent has no legal right to have legal costs paid by

Dún Laoghaire-Rathdown County Council. This equally applies to legal representation and payment of legal costs for the reporting persons.

3.4 Feedback

Feedback will be provided to the reporting person within three months of acknowledgement of receipt of the protected disclosure or within 3 months of date of receipt of disclosure if no acknowledgement is sent within three months of receipt of the disclosure. The reporting person can request in writing that they wish to receive further feedback after the initial three-month period until such time as the protected disclosure process is closed.

The legislation defines feedback as the provision of information to the reporting person on the action envisaged or taken as follow-up and the reasons for that follow-up. Follow up is defined as any action taken to assess the accuracy of the information submitted and, where relevant, to address the wrongdoing reported.

The format and detail of the feedback will be such to not prejudice the outcome of any investigation or any action that ensues by undermining the right to fair procedures. Any such feedback is provided in confidence and should not be disclosed by the reporting person, other than to their legal advisor or trade union representative.

3.5 Review of Decisions

Decisions and actions taken by Dún Laoghaire-Rathdown County Council on foot of the receipt of a protected disclosure can be reviewed, if requested by a party affected by any of the following processes:

- The conduct or outcome of any follow-up actions (including any investigation) taken on foot of the receipt of a protected disclosure;
- The conduct or outcome of any investigation into a complaint of penalisation; and
- Any decision to disclose the identity of a reporting person (except in exceptional circumstances).

The purpose of the review will not be to re-investigate the matter in question and will only address specific issues that the party in question believes have received insufficient consideration. The outcome of the review will be final and there will be no further entitlement to further reviews of the same issue.

This review will be undertaken by a Director of Services who has not been previously involved in the Protected Disclosures process.

Appendix A

Strictly Confidential

Form for Reporting a Protected Disclosure (External)

NAME <i>(Optional):</i>	
AREA OF WORK <i>(Optional):</i>	
CONTACT DETAILS <i>(Optional):</i>	

1. Please give date of alleged wrongdoing (if known) or date the alleged wrongdoing commenced or was identified: _____

2. Is the alleged wrongdoing ongoing? Yes No

3. Has the alleged wrongdoing already been disclosed to any member of management or another worker/worker? Yes No

If so when was the wrongdoing disclosed and to what effect?

4. Please give details of alleged wrongdoing and any support information:

5. Please give name of the person(s) (if known or applicable) allegedly involved in alleged wrongdoing: _____

6. Any other relevant information: