

The logo for TUSLA, featuring the word "TUSLA" in a bold, white, sans-serif font. The background of the entire page is a vibrant, abstract pattern of overlapping, rounded rectangular shapes in various shades of teal, green, and yellow, creating a sense of movement and depth.

TUSLA

An Ghníomhaireacht um
Leanaí agus an Teaghlach
Child and Family Agency

Protected Disclosures Policy

Protected Disclosures Policy

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1. Policy statement

- 1.1. Tusla lists trust, respect, kindness and empowerment as its values.
- 1.2. Tusla is committed to conducting its business in accordance with its values, and expects all workers to maintain a standard of ethics and to conduct themselves in a manner which maintains public trust and confidence, in accordance with its Standards of Integrity and Codes of Conduct.¹
- 1.3. The occurrence of wrongdoing in the workplace undermines these values and the purpose of this Protected Disclosures Policy (“this Policy”) is to assist and encourage workers to report wrongdoing in accordance with this Policy. The term “worker” is defined in broad terms in the Protected Disclosures Act 2014 (“the 2014 Act”).
- 1.4. This Policy aims to give effect to the obligations and provisions of the 2014 Act under which Tusla is required to have procedures in place to enable staff of Tusla to make “protected disclosures”. 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 under other legislation or indeed other policies or procedures.
- 1.5. This Policy and the procedure outlined herein are not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures. In particular, this Policy does not replace the organisation’s grievance procedure.
- 1.6. The 2014 Act aims to protect those who come forward and voluntarily make a disclosure within the meaning of the Act. The legislation does not remove existing reporting obligations, so where the law already makes reporting mandatory - in respect of child abuse, for example - the obligation to report remains in place.

2. Board/management commitment

- 2.1. Tusla is committed to the following:
 - a) Facilitating the disclosure of wrongdoing;
 - b) Encouraging workers to make protected disclosures at the earliest possible opportunity;
 - c) Providing workers with guidance as to how to make protected disclosures;

¹ Document reference PPPG 13/2018

- d) Assisting, supporting and protecting workers who make protected disclosures;
- e) Protecting a worker's identity in a manner consistent with the requirements of the 2014 Act and taking action where those requirements have been breached;
- f) Assessing any disclosure made, conducting an investigation, where warranted, and addressing all findings that require attention;
- g) Providing that workers are not to be penalised for reporting relevant wrongdoings; and
- h) Taking appropriate action against workers who make disclosures without a reasonable belief in the truth of the disclosure.

3. Responsibility

- 3.1. Overall responsibility for this Policy rests with the Board of Tusla.
- 3.2. Day to day responsibility for protected disclosures is delegated to the Head of Legal Services, Tusla.
- 3.3. Disclosures received by any Tusla office are directed to the Internal Investigations Unit (IIU) within Tusla's Office of Legal Services.
- 3.4. Disclosures related to the Internal Investigations Unit or Tusla's Office of Legal Services or associated services or functions are directed to the Director of Services and Integration.
- 3.5. Disclosures received by the Board are processed in accordance with the Terms of Reference of the Audit and Risk Committee. The Audit and Risk Committee may refer such disclosures to the Internal Investigations Unit.
- 3.6. In circumstances where an investigation is deemed to be required following the making of a disclosure, such an investigation is generally conducted by the Internal Investigations Unit. In certain limited circumstances, the investigation may be conducted by external contractors, in which case the express approval of the Chair of the Board of Tusla is required.
- 3.7. The acceptance and or implementation of recommendations arising from any such investigation are a matter for Tusla and the management of the relevant service and are not a matter for the Internal Investigations Unit.

4. What is a protected disclosure?

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 wrongdoing which came to the attention of the worker in connection with the worker's employment and is disclosed in the manner described in the Act.

5. Who can make a disclosure under this Policy?

5.1. Wrongdoing may come to the attention of, and a disclosure of relevant information can be made by, any worker. In line with the inclusive approach, which underpins this Policy, a "worker" is defined as any current or former employee, independent contractor, sub-contractor, agency worker, or apprentice and any person who interacts with the workplace on a contractual basis should be considered a worker for the purposes of this Policy.

5.2. Tusla is not empowered by the 2014 Act to accept disclosures from workers in Tusla-funded bodies. Tusla-funded bodies may have their own protected disclosures procedures in line with legislation. This in no way affects any reporting or escalation of risk by Tusla-funded bodies to Tusla's Commissioning Service in line with Service Level Agreements or other governance arrangements.

6. Protected disclosures: guidance on terminology

6.1. Section 5 of the 2014 Act provides protection for workers who disclose information in relation to the following wrongdoings namely

- 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 to which he or she is subject, 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 and safety of an 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, corrupt or irregular use of public monies or resources has

occurred, is occurring or is likely to occur;

- g) That an act, omission or course of conduct by a public official is oppressive, improperly discriminatory, or grossly negligent, or constitutes gross mismanagement.
- h) That information tending to show that any matter falling within any one of the preceding paragraphs, whether alone or in combination, has been, is being or is likely to be deliberately concealed or destroyed.

6.2. 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.

6.3. Please refer to the [Glossary](#) at the end of this document for a guide to all terms and definitions.

7. Feedback

- 7.1. The reporting person will be provided with periodic feedback in relation to the matters disclosed and be advised when consideration of the disclosure is complete, where appropriate. This does not require Tusla to give a complete account of what the situation is at a particular point in time in terms of progress.
- 7.2. No information will be communicated that could prejudice the outcome of the investigation or any action that ensues (e.g. disciplinary, or other legal action, including prosecution) for example, by undermining the right to fair procedures enjoyed by the person against whom a report or allegation is made.

8. What type of disclosure should generally not be raised under this Policy?

8.1. Personal complaints and grievances may constitute protected disclosures depending on the nature of the disclosure.

8.2. It should be noted that this Policy:

- a) Does not cover disclosures of wrongdoing if the matter is one which it is the function of the worker or of the worker's employer to detect, investigate or

prosecute unless it involves or consists of an act/omission on the part of the employer;

- b) Is not a replacement for existing mandatory reporting schemes, in particular mandatory reporting Children First is not affected, and where the law already makes reporting mandatory - in respect of child abuse, for example - the obligation to report remains in place.
- c) Does not cover a disclosure where the worker knowingly conveys false information. If it transpires that a staff member makes a disclosure, which they know to be false or do not believe to be true, Tusla may take disciplinary or other appropriate action.

9. Disclosure of information

9.1. A protected disclosure within the meaning of the Act should contain “information” which tends to show wrongdoing. The ordinary meaning of disclosing “information” is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation, for example, that a law is being breached. No precise form of words is required.

9.2. Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. All workers need to do, and should do, is disclose the information that they have, based on a reasonable belief that it discloses a wrongdoing. Workers should also be satisfied that the information is necessary to disclose that wrongdoing and should not access, process, disclose or seek to disclose information about individuals that is not necessary for the purpose of disclosing the wrongdoing.

10. Anonymous disclosures

10.1. An anonymous disclosure is where a reporting person withholds their identity. Anonymous disclosures are not excluded from the protection of the 2014 Act. Anonymous disclosures will be acted upon to the extent that this is possible, although the ability to investigate may be constrained in the absence of the knowledge of the identity of the reporting person.

10.2. It should be noted that keeping the reporting person informed and protecting them from penalisation may be difficult or impossible to apply unless their anonymity is lifted. Furthermore, a worker cannot obtain redress under the 2014 Act without

identifying themselves.

11. Reasonable belief

- 11.1. A worker must have a reasonable belief that the information disclosed tends to show a wrongdoing. The term “reasonable belief” does not mean that the belief has to be correct. A worker is entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.
- 11.2. 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 the worker is not obliged to find proof of their suspicion. In such a case the worker may have reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the worker was mistaken.
- 11.3. No worker will be penalised simply for getting it wrong, so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.
- 11.4. However, a disclosure made in the absence of a reasonable belief (for example where false allegations are deliberately made or made without any reasonable belief in the trust of the allegations) will not attract the protection of the 2014 Act and, furthermore, may result in disciplinary action against the reporting person.

12. Making a disclosure

- 12.1. A worker must make a disclosure in the manner set out in the 2014 Act to gain the protections of the Act. Different standards apply depending on the person or body to whom the worker discloses. A disclosure can be made in the ways set out below.

12.2. Internally – To Tusla

12.2.1. Tusla encourages all workers to make disclosures internally to Tusla and to use this Policy and any associated guidance as provided for on the Tusla hub. Disclosures will be taken seriously and the worker making a protected disclosure will receive appropriate protection.

12.2.2. As a first step, appropriate concerns should be raised with the worker’s immediate manager or their superior. However if the worker does not wish to

use this route, for example given the seriousness and sensitivity of the issues involved, disclosures should be made by sending a **Protected Disclosures Reporting Form** to disclosures@tusla.ie

12.3. Externally - Disclosure outside Tusla

12.3.1. The 2014 Act allows a worker to make a disclosure to persons other than their employer in certain circumstances. Different requirements need to be met in different cases, as set out below.

12.3.2. Other responsible person

12.3.2.1. Tusla may designate a specialist independent third party to receive a disclosure on its behalf.

12.3.3. A prescribed person

12.3.3.1. Certain persons are prescribed by Statutory Instrument, 367 of 2020 (“SI 367”) to receive disclosures (“prescribed persons”). The CEO of Tusla is a prescribed person, in that workers in early years services, alternative care services in the private and voluntary sector, and alternative education settings, can make a protected disclosure about suspected wrongdoing related to their work. People who work in those settings are directed to [guidance on Tusla’s website](#).

12.3.3.2. For Tusla workers, the prescribed persons that a worker is most likely to make a disclosure to are:

- Chief Executive Officer of the Health and Social Care Professional Council for disclosures in relation the following:

All matters relating to the protection of the public by the promotion of high standards of professional conduct, education, training and competence through the registration of health and social care professionals, as provided for by the [Health and Social Care Professionals Act 2005](#).²

- Chief Executive Officer of the Health Information Quality Authority for disclosures in relation to the following:

All matters relating to the standards of safety and care of persons receiving health and social care services in the public and voluntary health care sectors

² <http://www.irishstatutebook.ie/eli/2005/act/27/enacted/en/html>

and social care services in the case of the private health care sector, as provided for by the [Health Act, 2007](#).

- There are a number of other prescribed persons to whom Tusla employees can make disclosures and a full list is available from the Department of Public Expenditure and Reform at <https://www.gov.ie/en/publication/e20b61-protected-disclosures-act-guidance-for-public-bodies>.

12.3.3.3. It should be noted that the 2014 Act provides an additional requirement when making a disclosure to a prescribed person, in that the worker must believe that the information disclosed, and any allegation contained in it, are substantially true. This is a higher standard of that required when disclosing internally to Tusla.

12.3.3.4. Tusla workers who wish to make a disclosure to one of these bodies are advised to contact the relevant body directly for current information on how to make such a disclosure.

12.4. A Minister of the government

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

12.4.2. A Tusla worker is entitled to make a disclosure to the Minister for Children, Equality, Disability, Integration and Youth.

12.5. A legal adviser

12.5.1. The 2014 Act allows a disclosure to be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body.

12.6. Alternative external disclosures (in very limited circumstances)

12.6.1. It is preferable in most circumstances to disclose internally within Tusla and, if that is not appropriate, to one of the disclosure options above. It will rarely be

appropriate to make alternative external disclosures where the disclosure could be dealt with through one of the other disclosure options above. There are stringent requirements for alternative external disclosures to qualify as protected disclosures under the 2014 Act.

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

- The worker must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true; AND
- The disclosure must not be made for personal gain; AND
- At least one of the following conditions at (i) to (iv) must be met:
 - i. At the time the disclosure was made the worker reasonably believed that they would be penalised if they made the disclosure to the employer, a responsible person, a prescribed person or a Minister; or
 - ii. Where there is no relevant prescribed person, the worker reasonably believed that it was likely that evidence would be concealed or destroyed if the worker made the disclosure to the employer or responsible person; or
 - iii. The worker has previously made a disclosure of substantially the same information to the employer, a responsible person, a prescribed person or a Minister; or
 - iv. The wrongdoing is of an exceptionally serious nature;
- AND
- In all these circumstances, it is reasonable for the worker to make an alternative external disclosure.
 - The assessment of what is reasonable takes account of, among other things, the identity of the person to whom the disclosure is made, the seriousness of the wrongdoing, whether the wrongdoing is ongoing or likely to occur in future, whether any action had been taken in cases where a previous disclosure was made and whether the worker complied with any procedures in place when making that previous disclosure.

13. Disclosure in the area of law enforcement, security, defence, international relations and intelligence

13.1. Under section 17(1) of the 2014 Act, certain information about children's detention schools or remand centres may be excluded from the definition of relevant information, and therefore would not be considered a protected disclosure.

14. Penalisation (including dismissal and detriment)

14.1. The 2014 Act provides specific remedies for workers who are penalised for making a disclosure. Penalisation means any act or omission that affects a worker to the worker's detriment and includes suspension, lay-off, dismissal, demotion, loss of opportunity for promotion, transfer of duties, change of location of place of work, reduction in wages, change in working hours, the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty), unfair treatment, coercion, intimidation, harassment, discrimination, disadvantage, injury, damage, loss or threat of reprisal

14.2. Penalisation can also include a detriment suffered by an individual because that individual, or a third party, has made a disclosure. A detriment in this context includes coercion, intimidation, harassment, discrimination, disadvantage, adverse treatment in relation to employment (or prospective employment), injury, damage, loss or threat of reprisal.

14.3. All reasonable steps will be taken to protect workers from penalisation. Workers who experience any act of penalisation should notify disclosures@tusla.ie and the notification will be assessed / investigated and appropriate action taken where necessary.

15. Confidentiality / protection of identity

15.1. The 2014 Act provides that a disclosure recipient (which in this context includes any person to whom a disclosure is referred in the performance of their duties) must not disclose to another person any information that might identify the reporting person, except where:

- (i) the disclosure recipient shows that he or she took all reasonable steps to

- avoid so disclosing any such information,
- (ii) the disclosure recipient reasonably believes that the reporting person does not object to the disclosure of any such information,
 - (iii) the disclosure recipient reasonably believes that disclosing any such information is necessary for —
 - (a) the effective investigation of the relevant wrongdoing concerned,
 - (b) the prevention of serious risk to the security of the State, public health, public safety or the environment, or
 - (c) the prevention of crime or prosecution of a criminal offence,
- OR
- (iv) the disclosure is otherwise necessary in the public interest or is required by law.

15.2. Where action is to be taken following a disclosure, except in exceptional cases, the Head of Legal or their delegate or investigator, will contact the reporting person and, where possible, gain their informed consent, prior to any action being taken that could identify them.

15.3. Where it is decided that it is necessary to disclose information that may or will disclose the identity of the reporting person, the reporting person should be informed of this decision, except in exceptional cases. The reporting person may request a review of this decision and a review should be carried out, where practicable.

15.4. Workers who are concerned that their identity is not being protected should notify the Head of Legal.

16. Review

16.1. A reporting person may seek a review of

- the outcome of a preliminary evaluation
 - a decision to disclose their identity
 - the outcome of any assessment or investigation of an act of penalisation
- by emailing disclosures@tusla.ie setting out the grounds, or specific matters they wish to have addressed within their review.

16.2. A decision to proceed or not with a review represents a final decision by Tusla on the matter.

16.3. There is no entitlement to two reviews in respect of the same issue.

17. Annual reporting

17.1. In accordance with its statutory obligations, no later than 30 June each year, Tusla will prepare and publish a report in relation to the previous year, setting out (i) the number of protected disclosures made to the Tusla; and (ii) any action taken in response to such protected disclosures. The report shall be published in a form which does not enable the identification of persons involved in the protected disclosures.

17.2. Tusla will also publish this information in its Annual Report.

18. Amendments

18.1. This Policy will be communicated as appropriate and will be subject to regular monitoring and review.

Glossary

Term	Definition
2014 Act	The Protected Disclosures Act, 2014, as amended.
Information	<p>A disclosure should contain information which tends to show wrongdoing. Information means facts, such as stating that particular events have occurred. This is different to simply making an allegation. For example, the statement “You are not complying with health and safety requirements” does not disclose any facts – this is only an allegation unless facts (or context from which facts can be derived) are provided to support it.</p> <p>Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not try to do so. All workers need to do, and should do, is disclose the information that they have, based on a reasonable belief that it discloses a wrongdoing. Workers should also be satisfied</p>

	that the information is necessary to disclose that wrongdoing and should not access, process, disclose or seek to disclose information about individuals that is not necessary for the purpose of disclosing the wrongdoing.
Protected disclosure	A protected disclosure is defined in the 2014 Act 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 connection with the worker's employment and is disclosed in the manner prescribed in the Act.
Reasonable belief	<p>A worker must have a reasonable belief that the information disclosed tends to show a wrongdoing. The term "reasonable belief" does not mean that the belief has to be correct. A worker is entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.</p> <p>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 is not obliged to find proof of their suspicion. 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.</p> <p>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.</p>
Reporting person	A worker who has made a protected disclosure in accordance with the provisions of protected disclosures legislation.
Relevant wrongdoing(s)	<p>Section 5 of the 2014 Act provides protection for workers who disclose information in relation to the following wrongdoings:</p> <ul style="list-style-type: none"> (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;

	<p>(e) Damage to the environment;</p> <p>(f) An unlawful or otherwise improper use of funds or resources of a public body, or of other public money;</p> <p>(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</p> <p>(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.</p> <p>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.</p>
Worker	<p>Worker is defined in section 3 of the 2014 Act. For the purposes of this Policy, it includes</p> <ul style="list-style-type: none"> ○ Employees (full time and part-time) ○ Former employees ○ Contractors ○ Agency workers ○ Temporary workers ○ Work experience students ○ People on secondment in Tusla
Wrongdoing(s)	<p>The term “wrongdoing” or “wrongdoings” referenced in this Policy is to be taken to refer to one or more of the relevant wrongdoings referenced in section 5 of the 2014 Act.</p>

Appendix A: Protected Disclosures Reporting Form

This form is available in Word version on Tusla's [website](#).



PROTECTED DISCLOSURES REPORTING FORM

Tusla welcomes the reporting of disclosures under its Protected Disclosure Policy.

The Protected Disclosure Policy is part of the Tusla approach to good governance as it seeks to deter, prevent and detect fraud and other significant wrongdoings.

Before completing this form, you should:

Consider whether the Protected Disclosures Policy is the appropriate policy under which to report your concern (matters of private interest may be reported under grievance or bullying and harassment policies through Tusla's Human Resources department)

Ensure that the report is being made in relation to a matter that you have reasonable grounds to be concerned about.

Reports should be submitted to an appropriate person as outlined in Tusla's Protected Disclosures Policy (generally, disclosures@tusla.ie for Tusla staff; ceo@tusla.ie for staff in the organisations Tusla regulates).

Name of Worker reporting the concern: (Anonymous reports will be considered but not encouraged)	
Confidential contact number:	
Email Address:	
Details of alleged wrongdoing including dates, if applicable:	

(Care should be taken to only include the name(s) of individual(s) directly relevant to the report)	
Has the alleged wrongdoing being reported previously: (if so please specify when and to whom)	
Date:	
Signature:	



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