

Protected Disclosures Policy and Procedure

A guide for whistleblowing on alleged wrongdoing



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1. Introduction and Policy Statement

1.1. Introduction

The purpose of this document is to set out Tusla - Child and Family Agency's policy and procedures on Protected Disclosures in the workplace under the Protected Disclosures Act, 2014. The vast majority of concerns that staff might experience in their day to day working environment can be addressed through normal workplace reporting. This particular policy refers to specific wrongdoings as identified within the legislation. Such concerns which are not reported may allow the alleged wrongdoing to continue, to the detriment of Tusla.

The Protected Disclosures Act 2014 provides a statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the workplace in the knowledge that they can avail of significant employment and other protections if they are penalised by their employer or suffer any detriment for doing so.

The Act requires every public body to establish and maintain procedures for the making of protected disclosures and procedures for dealing with such disclosures. It also requires that public bodies provide written information relating to the procedures established. The 2014 Act became operational on 15th July 2014.

1.2. Policy Statement

The Child and Family Agency's Protected Disclosure Policy is intended to encourage and enable workers to raise serious wrongdoing within our workplace rather than overlooking a problem or reporting externally. Under this policy a worker is entitled to report serious wrongdoings or disclose information without fear of penalisation or threat of less favourable treatment, discrimination or disadvantage.

2. Differentiating between Protected Disclosures and Personal Complaints

2.1. What is a "Protected Disclosure"?

A Protected Disclosure is defined in the Protected Disclosures Act 2014 as a disclosure of relevant information related to wrongdoing made by a worker in the manner specified under the Act.¹ For the purposes of the Act, information is "relevant" if:

- In the reasonable belief of the worker it tends to show one or more 'relevant wrongdoings' and
- It came to the attention of the worker in connection with the worker's employment.

2.2. Personal Complaint vs. Protected Disclosures

The 2014 Act is intended to deal with disclosures in the public interest. This normally involves wrongdoings that are likely to cause harm to Tusla itself or to the public at large, as opposed to personal complaints.

¹ See Section 5 of Protected Disclosures Act 2014

These procedures are not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures. A Protected Disclosure involves the disclosure of information which, in the reasonable belief of the worker making the disclosure, shows that one or more of the following relevant wrongdoings has been committed or is likely to be committed:

- Unlawful or improper use of public funds or resources
- Financial misconduct or fraud
- Corruption, bribery or blackmail
- Failure 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
- Endangerment of the health or safety of any individual
- Damage to the environment
- The commission of an offence
- Miscarriage of justice
- Gross negligence or gross mismanagement by public bodies
- The concealment of any of the above.

The list above is not exhaustive. A full definition of wrongdoing can be found in Section 5(3) of the Act at <http://www.irishstatutebook.ie/2014/en/act/pub/0014/index.html>.

All employees are encouraged to raise genuine concerns about possible wrongdoing at the earliest opportunity, and in an appropriate way. It should be noted that 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.

If a worker makes a disclosure and feels they have been penalised as a result of making a disclosure, then that complaint will be dealt with in accordance with Section 14 of this policy.

Matters relating to personal grievances are dealt with through existing Tusla policies. For example, where a worker feels that there has been a breach of their own terms and conditions, this type of complaint would be dealt with under the Grievance Procedure. Alternatively, a worker may feel that they are being bullied or harassed by a colleague. This type of complaint should generally be dealt with under the Dignity at Work procedure.

3. Commitment and Responsibility

3.1. Commitment

Tusla is committed to maintaining the highest standards of honesty, openness and accountability and actively encourages those with knowledge of wrongdoing to come forward. In relation to Protective Disclosure, the Board of the Child and Family Agency is committed to the following:

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

3.2. Responsibility

Overall responsibility for these procedures rests with the Board of the Child and Family Agency. Day to day responsibility for these procedures is delegated to the Director of Quality Assurance.

4. The Context

4.1. Values and behaviours of the Child and Family Agency

Tusla has developed a set of values and behaviours that set out a firm commitment to service users, stakeholders and staff about how the Agency will act.

- ***Courage and Trust***
 - Reliable, committed and accountable
 - Professional, ethical and responsible
 - Willing to stand up for our values.
- ***Respect and Compassion***
 - Putting the individual at the heart of our services
 - Protecting the most vulnerable
 - Respectful and considerate towards all.

- ***Empathy and Inclusion***
 - Fair, responsive and transparent
 - Promoting collaboration and connected thinking
 - Taking a long-term, whole-system view.

4.2. Standards of Integrity and Codes of Conduct for Child and Family Agency staff

The Standards of Integrity and Codes of Conduct for the Child and Family Agency have been introduced in accordance with Part 5 of the Child and Family Agency Act 2013, Section 36 and the Ethics in Public Office Act 1995 – 2001.

The Standards of Integrity and Codes of Conduct set out a clear framework within which all workers must operate. It sets out in a single document the principles which should govern the behaviour of employees and the values the Child and Family Agency espouses.

In the performance of their duties employees must:

a) Maintain high standards in service delivered by:

- Discharging responsibilities conscientiously, honestly and impartially
- Always acting within the law
- Performing their duties with efficiency, diligence and courtesy.

b) Observe appropriate behaviours at work by:

- Dealing with the public sympathetically, fairly and promptly
- Treating their colleagues with respect.

c) Maintain the highest standards of probity by:

- Conducting themselves with honesty, impartiality and integrity
- Never seeking to use improper influence, in particular never seeking to use political influence to affect decisions concerning their official positions
- Abiding by guidelines in respect of offers of gifts or hospitality
- Avoid conflicts of interests.

d) Support and be loyal to the Child and Family Agency by:

- Supporting colleagues and the Child and Family Agency in the performance of its functions
- Promoting the goals and objectives of the Child and Family Agency and not undermining any of them through action or omission
- Seeking to resolve grievances and concerns through agreed channels (this includes the Good Faith Reporting Policy and Procedure and the relevant HR policies)

- Ensuring any actions taken maintain public confidence in the Child and Family Agency and its good name.

5. To Whom Does this Policy Apply?

This policy applies to all employees of the Agency. The 2014 Act also applies to individuals who enter into a contract with the Agency to carry out work or provide a service to the Agency. It also applies to people who are provided with work experience by Tusla and people whose services are provided to Tusla by a third party, for example a recruitment agency.

6. Key Principles Underlying the Policy

Tusla is committed to addressing concerns and supporting workers in speaking-up relating to potential wrongdoing in the workplace and to providing the necessary support for workers who raise genuine concerns. A worker who makes a protected disclosure is protected from penalisation (or threatened penalisation), which includes suspension, lay-off or dismissal, demotion, and unfair treatment.

Any worker who has a reasonable belief that the information contained in his or her disclosure shows or tends to show a wrongdoing (see section 2.2 for a list of the types of wrongdoing that are covered by the legislation) will be protected against penalisation even if the worker's concern is ultimately misguided or mistaken. The motivation of the worker for making a disclosure is irrelevant. Disclosures will be dealt with regardless of the worker's motivation for making the disclosure so long as the worker reasonably believes that the information disclosed tended to show a wrongdoing.

However, a disclosure made in the absence of a reasonable belief² will not attract the protection of the 2014 Act and this may result in disciplinary action against the discloser. In addition, disclosure of an alleged wrongdoing does not confer any protection or immunity on a worker in relation to any involvement they may have had in that alleged wrongdoing.

Where a protected disclosure is made, the following principles will apply:

- The concern will be treated seriously and investigated
- In accordance with Section 16 of the Act, where an investigation takes place, every appropriate step will be taken to safeguard the identity of the person raising the concern (see Section 15 of this document)
- The person raising the concern will be advised on how the issue has been addressed, including the outcome of any investigation
- The person raising the concern should not be disadvantaged in any way for having made the disclosure, even if no wrongdoing is identified, providing the concern was based on a reasonable belief.

² A reasonable belief is defined as where there is a reasonable basis to believe that wrongdoing, as prescribed in the legislation, has occurred or is likely to occur.

Tusla will take all reasonable steps to treat disclosures made in accordance with this Policy in a confidential and sensitive manner. Tusla will not disclose the worker's identity without their consent; unless it is required by law or necessary for the effective investigation (i.e. a disciplinary investigation of a staff member may require the discloser's name to be revealed to afford due process) of the relevant wrongdoing (see Section 15 below for further details on "Confidentiality/Protection of Identity").

If a worker believes that he/she has been penalised for the making of a disclosure of wrongdoing in accordance with this Policy they should inform the Director of Human Resources to seek redress (see Section 15 below for further details on "Penalisation").

This policy document relates to the reporting of serious wrongdoing as defined in the Protected Disclosures Act and is not intended to act as a substitute for normal day to day operational reporting. Neither is it intended to act as a substitute for existing grievance procedures all of which remain in place and can be accessed on the Tusla hub or from the Tusla Human Resources Department.

7. What Type of Disclosure is Not Covered?

The Policy does not cover personal complaints or personal grievances. Nor does it cover a disclosure where the worker knowingly conveys false, misleading or frivolous information as these disclosures do not fall within the Act. If it transpires that a worker makes a disclosure, which they know to be false or do not believe to be true, Tusla reserves the right to take disciplinary or other appropriate action.

Legal Advisors are excluded from the protections of the Act in situations where information comes to their attention while providing legal advice. Where a claim to legal professional privilege could be maintained in respect of such information, the legal advisor will not be able to gain the protections of the 2014 Act.

8. To Whom Do You Make a Disclosure?

A worker must make a disclosure in the manner set down in the 2014 Act to gain the protections of the Act. A disclosure can be made in two ways:

1. Within Tusla
2. Outside of Tusla

8.1. Disclosure within Tusla

Workers wishing to discuss a potential protected disclosure should contact the Protected Disclosures Recipient who is the Director of Quality Assurance on 01 7718500 or by email qa@tusla.ie. The Director of Quality Assurance may delegate this function to an authorised officer where appropriate; this will be advised to the person making the disclosure.

Disclosures relating to the Senior Executive of Tusla should be made to the Chief Executive of Tusla on 01 7718500 or by email executive@tusla.ie.

Disclosures relating to the Chief Executive should be made to the Chair via the Board Secretary at 01 7718500 or by email board.secretary@tusla.ie .

Alternatively, all of the above can be written to at:

*Tusla- Child and Family Agency
The Brunel Building
Floor 2 -5
Heuston South Quarter
Dublin 8*

In certain circumstances the wrongdoing may not meet the criteria for reporting under the Protective Disclosure legislation, but is serious enough to be of concern to the worker. Such issues may be reported under Tusla’s Good Faith Reporting policy. In circumstances where the Protected Disclosure Recipient receives a Good Faith report, a decision will be made in keeping with the Good Faith policy.

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 should do is disclose what they consider to be an alleged wrongdoing based on a reasonable belief that it has, is or will occur.

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.

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.

8.2. Disclosure outside Tusla

The 2014 Act allows a worker make a 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:

(a) **Other responsible person**

Where a worker reasonably believes that the alleged wrongdoing relates to the conduct of a person other than his/her employer, or to something for which another person has legal responsibility, then the worker can make the disclosure to that other person.

(b) **A “Prescribed person”**

Certain persons are prescribed by Statutory Instrument No. 339 of 2014 (“S.I. 339”) to be the recipient of disclosures (“prescribed persons”). A worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under S.I. 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.

Please click on the link below to access S.I. 339 which sets out the list of Prescribed Persons:

<http://www.irishstatutebook.ie/eli/2014/si/339/made/en/print>

For information, certain Officers of Agencies are amongst those listed as prescribed persons under S.I. 339, and they include (among many):

- CEO of the Adoption Authority of Ireland
- The Comptroller and Auditor General
- The Data Protection Commissioner
- Director General of the Environmental Protection Agency
- CEO of the Health and Safety Authority
- Members of the Garda Síochána Ombudsman Commission
- CEO of the Health and Social Care Professional Council (CORU)
- CEO of Health Information and Quality Authority (HIQA)
- CEO of each local authority in Ireland.

(c) A Minister of the Government

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.

(d) A legal adviser

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 (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)

It is preferable in most circumstances to disclose to the employer and, if that is not appropriate, to one of the disclosure options at (a) to (d) above. It will rarely be appropriate to make alternative external disclosures where the disclosure could be dealt with through one of the other disclosure options above, as there are stringent requirements for alternative external disclosures to qualify as protected disclosures under the 2014 Act.

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

- The worker must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true
- The disclosure must not be made for personal gain
- 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
- Whether the worker complied with any procedures in place when making that previous disclosure.

9. How to Make a Disclosure

Tusla recommends that the disclosure be submitted on the template at Appendix A and should include the following at a minimum:

- Date submitted
- Subject
- Detail of wrongdoing
- Detail of whether the wrongdoing was previously raised and to whom
- Confidential contact details of the discloser (as appropriate).

The detail of the disclosure should be sufficient to enable a person without prior knowledge to understand the issue.

Disclosures should be submitted to the appropriate person as outlined in section 8.

10. Anonymous Disclosures

There is a distinction between an anonymous disclosure (where identity is withheld by the discloser) and confidential disclosures (where identity is protected by the recipient).

Anonymous disclosures made by workers are not excluded from the protection of the 2014 Act. Reports or concerns expressed anonymously will be acted upon to the extent that this is possible given the constraints in obtaining further information on the alleged wrongdoing when it is received anonymously.

Tusla, therefore, encourages workers to identify themselves in making a report to facilitate a full investigation, where it is deemed such an investigation is warranted. Workers should note, however, that important elements of these Procedures (e.g. keeping the discloser informed and protecting a discloser from penalisation) may be difficult or impossible to apply unless the worker is prepared to identify themselves. Also, a worker cannot obtain redress under the 2014 Act without identifying themselves.

11. Protected Disclosure Process

11.1. Receipt of Disclosure

In all instances, where a report has been made under this policy, a record will be made of its receipt and a file opened.

Throughout the Protective Disclosure process all reasonable steps in keeping with section 15 of this policy, will be taken to avoid disclosing to another person any information that might identify the person who made the disclosure.

11.2. Preliminary Evaluation

On receipt of a Protective Disclosure report, a preliminary evaluation will be conducted by the appropriate person as identified in Appendix C, Figure 1.0. the Protected Disclosure Process, to determine whether the matter meets the requirements of the legislation. The preliminary evaluation process involves an assessment to determine whether the matter should be treated as a protected disclosure.

It might be necessary, as part of the preliminary evaluation process, to differentiate between protected disclosures and personal complaints/grievances. In some instances information provided may involve a personal complaint/grievance and protected disclosure matters. In such circumstances, it will 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.

Where matters raised involve Directors of the Senior Management Team, the Chief Executive of Tusla will determine the appropriate preliminary investigation. Where matters raised involve the Chief Executive of Tusla, the Chair will determine the appropriate preliminary investigation.

Where the matter is found not to meet the criteria of legislation, the Protective Disclosure Recipient (PDR), or the Chief Executive or the Chair will inform the discloser of the reasons why. The PDR or Chair may advise an alternative route if appropriate.

In cases where the preliminary evaluation identifies the matter as meeting the criteria a full investigation will be carried out.

It is important to note that some matters may be of such seriousness, that the investigation will be more appropriately carried out externally or by professional experts in a particular area. In such instances the matter may be the subject of a full investigation and / or be referred to an outside body, including An Garda Síochána.

11.3. Investigation

If the preliminary evaluation establishes that the matter meets the criteria of a Protected Disclosure, an investigation will be initiated. Financial matters will be investigated by the Internal Auditor. Non-financial matters which involve Senior Management Team Directors may be independently investigated and overseen by the Chief Executive or the Chief Executive's nominee. Non-financial matters which involve the Chief Executive may be independently investigated and overseen by the Chair or the Chair's nominee. In all other instances the investigation will be overseen by the PDR.

Where investigations are carried by persons other than the PDR, the worker reporting the concern will be notified of the name of the investigating person. In all investigations, the worker may be asked to provide additional assistance if required.

In order to ensure that the principles of fair procedure and natural justice are complied with during the investigative process, the Director of Human Resources or an independent HR

representative will be advised in writing of any disclosures. The PDR will not disclose the identity of the person who has made the disclosure unless required to do so under Section 15.

Investigations will include interviews with all appropriate individuals. Statements from all parties will be recorded in writing and a copy given to the person making the statement for confirmation of its accuracy. Interviewees will be advised that they are entitled to be accompanied by a colleague or trade union representative or other support person, should they so wish.

The worker who has made the disclosure will be provided with regular feedback for purposes of reassurance that the investigation is being progressed. In line with due process and fair procedure, Tusla will ensure that any information provided will not breach the legal rights of any person who is subject to the investigation.

All investigations will be carried out confidentiality and third parties will not be notified about the investigation unless necessary in the interests of the investigation.

At the conclusion of the process the worker who has made the disclosure will be informed of the general outcome of the investigation.

It is important to note that the protections of the legislation remain in place even if the findings of the investigation conclude there is no case to be answered. Therefore, it is imperative that the PDR maintains written records of actions and decisions taken. This information will be held safely and securely by the PDR and the Director of Human Resources in accordance with Data Protection legislation.

12. Data Protection

Whenever a protective disclosure is made the PDR must consider the rights of any person named in the report in keeping with Data Protection legislation.

13. Protection of the Rights of the Respondent

Where an allegation is made against an individual (the respondent), the principles of natural justice and fair procedures will be adhered to.

The respondent will be included in the investigation process and made aware of the details of any allegation against him/her in so far as is possible having regard to the requirements of confidentiality contained in the Act and will be given the opportunity, as part of a full investigation, to put forward their case in response to the allegation(s).

14. Penalisation (Including Dismissal and Detriment)

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. Penalisation is prohibited.

Workers who feel they have been subjected to penalisation should refer their concern as a grievance to the Director of Human Resources and the concern will be assessed/investigated and appropriate action taken, where necessary.

14.1. Right to Make a Complaint to a Rights Commissioner (Adjudication Officer)

Workers who believe that they may have been penalised (defined in Section 3 of the Protected Disclosures Act) reserve the right to make a complaint to a Rights Commissioner of the Labour Relations Commission (now Adjudication Officers of the Workforce Relations Commission), under Schedule 2, Section 12 of the Protected Disclosures Act, and seek a hearing.

15. Confidentiality / Protection of Identity

Tusla will take all reasonable steps to treat disclosures made in accordance with this Policy in a confidential and sensitive manner. Tusla will not disclose information that might identify the worker who made the disclosure unless it is required by law or necessary for the effective investigation of the relevant wrongdoing. In order to protect the discloser, the PDR will advise the discloser of the need for their discretion regarding the matter.

The 2014 Act provides that a PDR must not disclose to another person any information that might identify the discloser, 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 discloser does not object to the disclosure of any such information
- (iii) The disclosure recipient reasonably believes that disclosing any such information is necessary for:
 - (a) The effective investigation of the relevant wrongdoing concerned,
 - (b) The prevention of serious risk to the security of the State, public health, public safety or the environment, or
 - (c) The prevention of crime or prosecution of a criminal offence,

or

- (iv) The disclosure is otherwise necessary in the public interest or is required by law.

Where it is necessary to disclose the identity of the discloser, the PDR should contact the discloser and, where possible, gain the consent of the discloser, prior to any action being taken that could identify them.

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. The discloser may request a review of this decision and a review should be carried out, where practicable before any such disclosure of information is made.

All reasonable steps will be taken to protect the identity of the discloser, except as set out in points (i) to (iv) above. Workers who are concerned that their identity is not being protected should notify the person investigating their disclosure. Such notifications will be assessed and/or investigated and appropriate action taken where necessary.

16. Review of decisions

In the event that the discloser is not satisfied with

- (a) the decision made to disclose the identity of the discloser
- (b) the outcome of any preliminary evaluation/investigation undertaken in respect of the disclosure
- (c) the outcome of any preliminary evaluation/investigation in respect of any complaint of penalisation

the discloser can submit a request for review to the Chair who will oversee an independent evaluation of the matter. This decision will represent a final internal decision on the matter. In instances relating to the CEO, the Chair will nominate an independent reviewer.

17. Records

Written records, including timelines, in relation to any preliminary evaluation and/or investigation undertaken will be maintained, in keeping with Tusla's Records Management Policy and Data Protection obligations, as outlined in Tusla's Data Protection Staff Guidance Handbook.

Records of concerns raised, including the outcome, will be maintained by the PDR, after the closure of the case / in keeping with Tusla's records retention policy and Data Protection Legislation. These records will be maintained in a confidential and secure environment.

A summary report on all protected disclosures will be included in Tusla's Annual Report. No individual will be identified in this report. If the person making the disclosure does not consent to the use of part of their disclosure being used for this purpose they need to notify the PDR of their refusal.

The PDR will supply the Board of Tusla with a summary report on the status and outcomes on all Protected Disclosure reports every 3 months.

18. Further information / Review of Guidance

The Policy will be reviewed after the Department of Public Expenditure & Reform provides final guidance after public consultation and Government approval as outlined in Section 21 of the Act and at minimum of two year intervals or when required by the Board of Tusla.

The Protected Disclosures Act 2014 can be downloaded at:

<http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/acts/2014/a1414.pdf>

Appendix A – Protected Disclosures Reporting Form

Tusla welcomes the reporting of disclosures under the 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:

- a) 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 HR Directorate)
- b) 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 Protective Disclosures Policy.

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:		

This form is available separately on the Tusla website and Tusla Hub

Appendix B – Guidance for the Protected Disclosures Recipient

This Appendix provides guidance for senior officers (outside of the line management of Operations) in Tusla, who are responsible for investigating alleged serious wrongdoing under the Protected Disclosures Act 2014 ('the Act'). The Act provides protection for workers from penalisation by their employer for having made a disclosure in accordance with its provisions. Tusla's Policy on Protected Disclosures in the Workplace reflects the provisions and intent of the legislation.

Preliminary Evaluation

Tusla's Policy makes a distinction between a preliminary evaluation and an investigation. The PDR's evaluation will consist of two separate elements – an assessment as to whether the matters reported to you fall within the scope of the Policy and an assessment as to whether the matters reported are sufficiently serious to merit a investigation.

The Policy mirrors the matters listed as wrongdoings in the Act. They are broad and wide ranging in nature and are all considered to be serious matters. In many cases there is no requirement for an actual event to have occurred with just the possibility of occurrence being sufficient.

Part of the preliminary evaluation process may involve making discreet enquiries. The PDR must be careful not to give the impression that an investigation is underway.

If the PDR concludes that an investigation is not necessary, the PDR must record this decision and the reasons why.

Role of the Investigator

Your first task is to confirm with the initial recipient of the disclosure (if this is a different person) that he/she has advised the Director of Quality Assurance and the Director of Human Resources. Following that, you must advise the same individuals that the matter has been passed to you for investigation.

Insofar as you may wish to consult with the officer who may have passed the disclosure to you for investigation, it is important that you arrive at your own independent conclusions in relation to the matter under investigation.

The manner in which you conduct your investigation is one for determination by you having regard to the particular circumstances of the case. This is, however, subject to two very important considerations:

- *The issue of confidentiality* - The Protected Disclosures Act 2014 and Tusla's Policy recognise that it may not always be possible to completely protect the identity of the discloser. You do, however, have a responsibility to safeguard the identity of the discloser insofar as is practically and pragmatically possible. It is, therefore,

important to ensure that you take all reasonable steps to maintain the confidentiality of the identity of the person who made the disclosure of wrongdoing.

It is also important to note that in accordance with the legislation a failure to comply with this requirement is actionable by the person by whom the disclosure was made if that person suffers any loss by reason of the failure to comply.

- *Fair investigatory procedures* – Tusla’s Policy makes it clear that 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. Remember that, in addition to your responsibility to the discloser, you also have a responsibility to ensure that accusations of wrongdoing, which could potentially prove to be incorrect, are not made against innocent persons.

Should you require any particular guidance in relation to fair procedures you should seek advice from Human Resources Directorate.

Where it is necessary to interview individuals during the course of the investigation, they should be advised that they are entitled to be accompanied by a colleague or staff representative, should they so wish.

Keeping the discloser informed

Regular communication with the discloser is a vital element in the provision of assurance that the disclosure will be taken seriously.

You should take the time and trouble to explain your role in the process as set out in Tusla’s Policy, and the nature of the investigation you will undertake. You should also make it clear that an underlying principle of the Guidance is that the discloser is not disadvantaged in any way for having made a disclosure based on a reasonable belief, even if no wrongdoing is identified. This would also be an appropriate time to discuss the limits on confidentiality as set out in the legislation.

While there is a clear necessity to draw attention to the consequences of making a disclosure not based on a reasonable belief, an over emphasis on this aspect could potentially discourage persons from making reports of wrongdoing. Such an outcome would be contrary to one of the main purposes of the Guidance which is to encourage workers to speak up about wrongdoing.

If your investigation is taking some time you should provide the discloser, in so far as is possible and appropriate, with regular updates of progress.

Upon completion of your investigation

Regardless as to the nature of your findings you are required under Tusla’s Policy to advise the Director of Quality Assurance and the Director of Human Resources of the outcome of your investigation. You also need to advise the discloser of the outcome.

Where you have arrived at a conclusion that the discloser was not fully aware of all the facts or was genuinely mistaken in their belief of the occurrence or likely occurrence of wrongdoing, it is especially important to explain the basis of your finding to the discloser. As a discloser has a right under the legislation to disclose the information elsewhere a failure on your part to adequately explain matters will inevitably lead to such an outcome.

In a case where you have arrived at a conclusion that the discloser did not make his/her disclosure based on a reasonable belief, you should advise the Director of Human Resources, who will consider whether disciplinary proceedings ought to be pursued against the person concerned.

The making of a disclosure and subsequent investigation is a serious matter. You should carefully record all of the steps you have taken during the course of your discussions with the discloser and during the course of your investigation. A checklist has been prepared for your guidance which you should sign and maintain for your records. As there are no time limits set out in the legislation or Tusla’s Policy, it is important that you maintain your records until such time as all matters connected with the disclosure have been disposed of to your satisfaction.

Throughout the investigation, and following it, all conclusions, records should be filed and stored securely in keeping with Data Protection Legislation and Records Management Policies (see Tusla’s Data Protection Staff Guidance Handbook).

Investigation of a disclosure – checklist

1. Has the investigator read and familiarised themselves with the content of Tusla’s Protected Disclosure policy?	
2. Has the investigator familiarised his or herself with the procedures for conducting an investigation, taking account of the principles of natural justice?	
3. Has particular note been taken of their responsibilities regarding the avoidance of the disclosure of information that might identify the person by whom the disclosure was made?	
4. Has particular note been taken of their responsibilities regarding the avoidance of the disclosure of information that might identify the person by whom the disclosure was made?	
5. Has the investigator discussed the disclosure with the PDR?	
6. Has the investigator meet with the discloser and advised them that their concerns will be taken seriously?	
7. Has it been confirmed with the discloser that he or she has read the most up to date version of Tusla’s policy on Protected Disclosures?	
8. Has it been confirmed that the Director of Human Resources (or an independent HR executive if appropriate):	
<ul style="list-style-type: none"> • Has had receipt of the disclosure, • Is aware of the nature of the information contained therein, • Is aware of the outcome of the preliminary evaluation and that the matter has been referred to investigator for investigation 	

9. Has the Discloser been advised:	
<ul style="list-style-type: none"> • Who is carrying out the investigation? • That they will be kept updated of the progress of the investigation as appropriate? • Will be advised of the outcome when the investigation is completed? 	
10. Have the limits of confidentiality as set out in the Protected Disclosure legislation been explained to the Discloser?	
11. Where it is decided that it is necessary to disclose information that may or will disclose the identity of the discloser, has the Discloser been informed of this decision?	
12. Has the Discloser been advised of the outcome of the investigation and the reasons for this decision explained as far as possible?	
13. Has the Discloser been advised that they have the right to seek a review of any decisions made?	
14. Has the Director of HR been advised of the outcome?	
15. Where the investigation has concluded that in making a disclosure, the discloser did not have a reasonable belief in the wrong doing, has the matter been referred to the Director of HR for consideration?	

This checklist is available as a separate form on the Tusla website and the Tusla Hub

Appendix C – The Protected Disclosure



