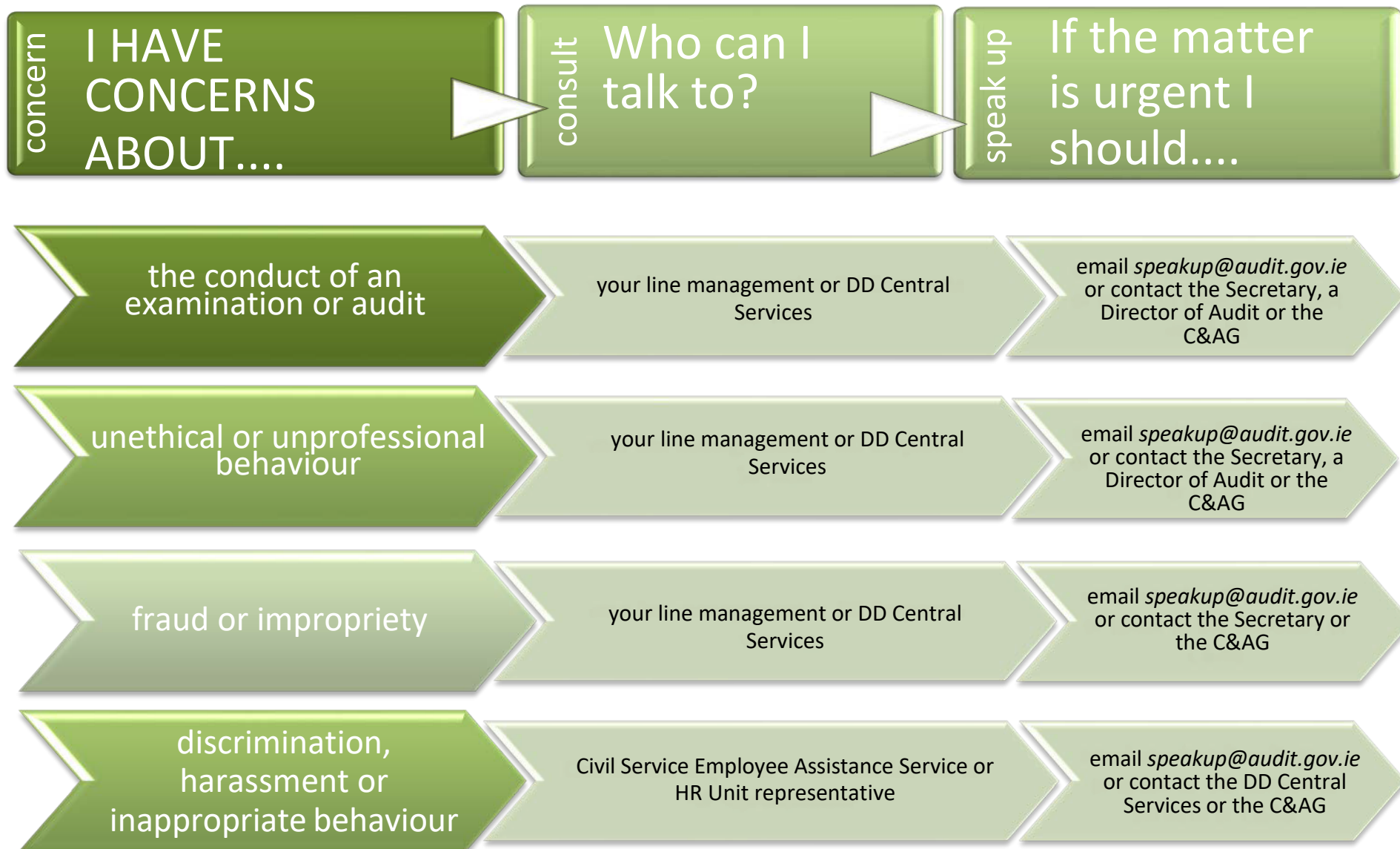


# SPEAK UP POLICY FOR STAFF



## Speak Up

The Office of the Comptroller and Auditor General (the Office) is committed under this policy to providing an environment which encourages you to Speak Up with any concerns you may have about wrongdoing in relation to any aspect of the way we do business or matters concerning personal conduct or behaviour.

Information is provided on how you can Speak Up in confidence, and in the knowledge that your concerns will be investigated thoroughly, fairly and without reprisal.

You have a responsibility to Speak Up if you suspect or believe actual wrongdoing has occurred or is occurring. Concerns may relate to your own experience or something you have witnessed.

We want to encourage people to call out observed behaviour which may go against our core values.

The Office is also committed to creating a workplace culture that supports the making of protected disclosures and protects reporting persons.

This policy aims to give effect therefore to the obligations and provisions of the Protected Disclosures Act 2014 as amended by the Protected Disclosures (Amendment) Act 2022 (the Protected Disclosures Act). It provides a safe platform for workers who wish to make a protected disclosure in the confidence that they have the protections provided by the Act. It does not replace any mandatory reporting obligation under other legislation that must be fully complied with.

The policy applies to all 'workers' as defined in Section 3 of the Protected Disclosures Act and includes all current and former employees, independent contractors, apprentices, students, agency staff, Audit Committee members and job applicants.

Please read this document carefully before making a report. It is solely your responsibility to ensure you meet the criteria for protection under the Act.

A protected disclosure is defined by the legislation as a disclosure of information which (1) in the **reasonable belief** of a worker, tends to show one or more **relevant wrongdoings**, (2) came to the attention of the worker in a **work-related context**, and (3) is **disclosed** in the **manner prescribed** in the Protected Disclosures Act.

In order to gain the protections of the Protected Disclosures Act, it is important that the disclosure is made in the manner set out in the Act and that the following essential conditions apply

- the information on the relevant wrongdoing must have come to your attention in a work-related context
- you must have a reasonable belief that the information tends to show relevant wrongdoing.

'Reasonable belief' does not require that the person reporting the wrongdoing proves the truth of the facts in the disclosure, but they must have a 'reasonable belief' that there are grounds for concern when making a disclosure using this procedure. A person's motivation for making a disclosure is not relevant when determining whether or not a report is a disclosure protected by the Act.

The Office undertakes not to ask a worker or former worker to waive their right to make a protected disclosure under any circumstances or restrict the making of a protected disclosure, or exclude or limit the operation of any provision of the Act.

Key definitions from the Protected Disclosures Act which are relevant to this policy are set out in Appendix A.

Responsibility for the implementation of this policy rests with the Secretary and Director of Audit with oversight provided by the Audit Board.

## Types of concern to be reported

There are a number of policies and procedures for the orderly and effective operation of our business and the conduct and protection of staff. Breaches of expected standards and non-compliance with these policies can undermine our mission and role and have a negative impact on staff.

Having effective reporting channels for staff who wish to voice concerns enables us to look at our practices, to learn lessons if something is wrong, and to address the matter.

Section 5(3) of the Protected Disclosures Act identifies relevant wrongdoings covered by the Act. These are

- criminal offences
- failure to comply with a legal obligation (other than a worker's contract of employment)
- miscarriage of justice
- endangerment of health and safety
- damage to the environment
- unlawful or improper use of public funds
- oppressive, discriminatory or negligent behaviour by a public body
- breaches of EU law
- concealing or destroying evidence of wrongdoing.

Please note that a matter concerning interpersonal grievances such as an interpersonal conflict exclusively affecting the reporting person and the Office or the reporting person and a co-worker is not a relevant wrongdoing for the purposes of the Act. Interpersonal grievances are dealt with under our [dignity at work](#) policy which is available on the Office intranet.

In addition, a matter is not a relevant wrongdoing (and does not come within the terms, or attract the protections and redress of the Act) if it comes to your attention as part of your audit or examination work and does not consist of or involve an act or omission on the part of the Office.

Moreover, this policy is not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures.

### Who can I talk to about my concern(s)?

We strongly encourage you to raise any concerns within the Office in the first instance. Depending on the nature of your concern, you may wish to talk to your line manager, your Deputy Director or the Deputy Director for Central Services.

If the matter is interpersonal (e.g. relational issues, harassment or bullying) you may wish to talk to a HR Unit representative or you can also talk to the Civil Service Employee Assistance Service<sup>1</sup> (Phone: 0818 00 8120). Interactions with the CSEAS are confidential subject to certain exceptions<sup>2</sup>.

Please note that the Office cannot offer legal advice. If you are considering making a formal disclosure, and have concerns about the law in that regard, we recommend that you seek independent legal advice in advance of doing so. A disclosure made by a worker in the course of obtaining legal advice from a barrister, solicitor or trade union official may be considered a protected disclosure.

The Office is a member of the Integrity at Work programme, a Transparency International (TI) Ireland initiative that helps foster workplaces where staff are supported to raise concerns of wrongdoing and act with integrity. As part of our commitment to protecting staff who raise concerns of wrongdoing, the Office has signed the Integrity at Work pledge to ensure that

anyone reporting wrongdoing will not face penalisation and that action will be taken in response to the concerns raised. A copy of the pledge is located at Appendix B.

Free and confidential assistance is available from TI Ireland via their *speak up helpline* at 1800 844 866, they can refer callers to the Transparency Legal Advice Centre to access free legal advice where appropriate. Their website [Transparency.ie](https://transparency.ie) details other ways in which they can be contacted and contains a 'Speak Up Safely' video and 'Speak Up Safely' Guide for information purposes. The 'Your Voice' page of the Office intranet also provides a link to the TI Ireland website.

If, having spoken to someone in the Office or having contacted one of the support organisations mentioned above, you wish to formally report a matter that concerns you, please follow the steps below.

### How to Speak Up

There is no required format for reporting wrongdoing to the Office. A report can be made verbally or in writing. The Office has appointed a designated person for the receipt and management of internal disclosures. You can contact our designated person by telephone, post or email as follows

**telephone:** 01 863 8608

(Where a voice mail message is left by the reporting person, it will be recorded, therefore avoid disclosing any unnecessary personal data).

**or write to:** Mr Mitchell McIntyre  
Deputy Director for Central Services  
Office of the Comptroller and Auditor General  
3A Mayor Street Upper  
Dublin 1  
D01 PF72

**or email:** [speakup@audit.gov.ie](mailto:speakup@audit.gov.ie)

(this address is only accessible by the Secretary and Director of Audit and the Deputy Director for Central Services).

Where you report your concerns by telephone, a physical meeting with the designated person can be arranged within a reasonable period, if requested by you. The meeting place used will endeavour to ensure the privacy and protection of your identity.

When a disclosure is made verbally, it will be documented by the designated person and agreed with you.

When making a disclosure, please note if the report is being made under the protected disclosures legislation, provide as much information as you can to enable the Office to assess and investigate your concern, such as

- your name, position in the Office and confidential contact details (unless being made anonymously)
- the date of the alleged wrongdoing (if known) or the date when the alleged wrongdoing commenced or was identified
- whether or not the alleged wrongdoing is still ongoing
- whether the alleged wrongdoing has already been disclosed and if so, to whom, when and what action was taken
- as many details as possible regarding your concerns (what is occurring / has occurred and how)
- any evidence to hand that would benefit the assessment decision of the Office

- the name(s) of the person(s) who it is alleged have engaged in wrongdoing (if the name is known and you consider it necessary to name an individual in reporting the wrongdoing disclosed)
- any other relevant information.

Where possible, you should seek to frame your disclosure in terms of information that has come to your attention rather than attempting to draw conclusions about particular individuals or specific offences.

A disclosure can only be followed up if it contains sufficient information and/or there is a reasonable possibility of obtaining further information.

### Anonymous disclosures

You may wish to remain anonymous when making a disclosure. An anonymous disclosure is where you make a report without leaving your name or identifying information. This should be distinguished from confidential reporting where an individual makes a report on the understanding that their name and other identifying details will not be shared by the recipient without the reporting person's permission.

Anonymous disclosures will be acted upon by the Office to the extent that this is possible given the constraints in obtaining further information on the alleged wrongdoing and in providing feedback on any investigation undertaken. In addition, it should be noted that a worker cannot obtain redress under the Protected Disclosures Act without identifying themselves.

We would therefore encourage anyone making a report to put their name to allegations, with our assurance of confidentiality where possible, in order to facilitate appropriate follow-up. This will make it easier to assess the disclosure and to take

appropriate action, and to provide protection from penalisation.

If this is not feasible, it may be possible to provide an anonymous email address that can be used by the designated person for corresponding with the reporting person.

### Disclosure to other persons

While it is preferable to disclose any concerns you may have to the Office, the Protected Disclosures Act allows disclosures to be made externally. For example, a relevant wrongdoing can be disclosed to a prescribed person, the Protected Disclosure Commissioner, a Minister of the Government or a third party.

- **Disclosure to a prescribed person:** A disclosure can be made to a prescribed person where the worker reasonably believes that the relevant wrongdoing falls within the description of the matters for which the person is prescribed. The worker must also reasonably believe that the information contained in the disclosure and any allegation contained in it is 'substantially true'. This is a higher threshold than for an internal disclosure. A list of prescribed persons can be found at <https://www.gov.ie/prescribed-persons>. A report to a prescribed person can be made orally or in writing.

The C&AG is a prescribed person for the receipt of disclosures about alleged wrongdoing relating to improper use of public funds and resources or matters concerning value for money in respect of entities that fall within his remit. A copy of our policy for prescribed person disclosures is available on the Office's website [www.audit.gov.ie](http://www.audit.gov.ie).

- **Disclosure to the Protected Disclosures Commissioner:** The Office of the Protected Disclosure Commissioner was established under the Protected Disclosures (Amendment) Act 2022. A disclosure can be made orally or in writing to the Protected Disclosures Commissioner who will refer the report to a prescribed person or other suitable person for acknowledgement, follow-up and feedback. The Commissioner also has responsibility for transmitting all protected disclosures sent to Ministers of the government to the most appropriate authority for assessment and thorough follow up. Only as a last resort will the Commissioner directly follow up on a report.
- **Disclosure to a Minister under Section 8 of the Protected Disclosures Act:** A disclosure can be made to the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation in writing via email to
  - [ProtectedDisclosuretoMinister@per.gov.ie](mailto:ProtectedDisclosuretoMinister@per.gov.ie) or post to
  - Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, c/o Private Secretary to the Minister, Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, South Block, Government Buildings, Upper Merrion Street, Dublin 2.

If making a disclosure to a Minister you should specify that the disclosure is being made under section 8 of the Protected Disclosures Act.

The Minister is required to refer the report to the Protected Disclosures Commissioner for onward referral or follow-up.

- **Disclosure to a third party:** A disclosure can be made to a third party provided you have already reported it internally and/or externally and you reasonably believe no action or insufficient action has been taken, there is an imminent or manifest danger to the public interest or there is a risk of penalisation or a low prospect of the relevant wrongdoing being adequately addressed internally.

Disclosures made outside the Office are subject to more stringent conditions in order to qualify for protection under the Protected Disclosures Act. Please see Appendix C for details of the various conditions necessary for a report to qualify as a protected disclosure.

We would encourage anyone making a disclosure report to do so internally, even if they have already made an external report. This enables the Office to identify and address any wrongdoing as quickly as possible. It also enables the Office to protect the reporting person from any potential penalisation which could arise as a result of a disclosure.

### Stages in managing a disclosure received

All disclosures, however made, are taken seriously and all efforts are made to address appropriately the issues raised. All reported matters will be logged by the Office.

### Acknowledgement

Unless you have chosen to remain anonymous or have requested otherwise, we will acknowledge in writing, receipt of your disclosure report within seven calendar days of its receipt. We will not issue an acknowledgement where we reasonably believe that this would jeopardise the protection of your identity.

Our acknowledgement will provide further information about the Office's disclosures process

that will apply to the handling of the report.

### Initial Assessment

The designated person will carry out an initial assessment of the information reported to determine if there is prima facie evidence that a relevant wrongdoing may have occurred and if it should be treated as a protected disclosure, having regard to the provisions of the Protected Disclosures Act.

The designated person will analyse the report to determine the nature of the information disclosed and whether it can be broken down into a series of separate allegations or parts, each of which may need to be followed up separately or approached differently, according to the circumstances.

Where necessary, the designated person may look to clarify with you the information reported or seek further information from you.

If, after the initial assessment, the designated person determines that there is no prima facie evidence that a relevant wrongdoing may have occurred, then the matter may be closed (or referred to another internal process, such as the dignity at work process for interpersonal grievances). You will be notified if this is the course of action being taken.

If there is prima facie evidence that a relevant wrongdoing may have occurred, appropriate action will be taken to address the relevant wrongdoing.

This will involve consideration of whether the alleged wrongdoing is serious or minor, whether an investigation of the alleged wrongdoing should be carried out and if so, what steps should be taken as part of such an investigation.

If, after the initial assessment, the designated person determines that the report does not contain any meaningful new information about a relevant wrongdoing compared to a past report where the procedures have been concluded, unless new legal

or factual circumstances justify a different follow up, the matter will be closed. You will be notified if this is the course of action being taken.

The designated person may share details of the disclosure with members of the Audit Board, particularly where there are serious implications for the Office arising from the disclosure.

In exceptional circumstances, such as where a conflict of interest exists, or the primary designated person is implicated in the protected disclosure, it may be necessary for an alternative designated person (member of senior management) to manage the disclosure and any investigation required.

### Investigation

Where an investigation is required, this will be carried out by an appropriate senior member of staff or by a third party appointed by the Office. This will depend on the seriousness of the matters reported and whether the Office considers the investigation would be more appropriately carried out externally or by professional experts in a particular area. The Office will also ensure that the person carrying out the investigation is independent of both the reporting person and the person concerned.

Terms of reference will not be necessary for all formal investigations but will generally be drawn up for complex or serious investigations.

In some cases the matter may need to be reported to, and investigated by, An Garda Síochána or another body with the statutory power and function of investigation of particular matters.

For less serious wrongdoings such as, where it does not involve consideration of the making of an adverse finding about any individual, a more informal process may be used.

It may involve discussion with relevant persons and/or consideration of documents or information only and/or a broad review of issues without specific enquiry into the facts of a particular scenario.

The nature of the informal process will be determined by the Office having regard to the circumstances including the nature of the alleged relevant wrongdoing.

We will engage with you to determine whether you are open to addressing the contents of the report using a more informal process. Please note however that there may be occasions where an informal process is commenced but in the course of that process, the need for a more formal investigation is identified.

It is not possible to lay down precise timescales for investigations, as this will depend on the nature of the issues raised. However, the Office will ensure that the investigators will act with reasonable speed without affecting the quality or depth of the investigation.

### Feedback

You will be updated on the progress and outcome of the investigation as appropriate having regard to the nature of the matters investigated.

Our initial feedback will be provided within three months of our acknowledgement of the receipt of your disclosure report. Further feedback at quarterly intervals until the procedure relating to the report has been closed, will be provided if requested by you in writing.

Where possible, the feedback will detail the action taken or envisaged as follow-up and the reason for such follow-up. Any feedback given will be provided in confidence and should not be disclosed further by you other than to a legal advisor or trade union

representative or unless the information forms part of a further protected disclosure being made via another channel.

It may not always be possible to provide details of the outcome of an investigation process to the reporting person particularly where it involves a disciplinary process with another worker. In general, such information is confidential between the employer and the worker disciplined.

Any remedial action deemed necessary by the Office to address any wrongdoing or the risk of wrongdoing that may have been identified, will be implemented within a reasonable timeframe.



### Confidentiality

The Protected Disclosures Act imposes an obligation on the Office to protect the identity of any person making a protected disclosure report.

The Office prohibits the designated person or any member of staff who receives a disclosure report from disclosing the identity of the reporting person to anyone else (or any

information that might reveal the identity of the reporting person) without the explicit consent of the reporting person, other than strictly within the provisions permitted in the protected disclosures legislation.

This does not however, include people who the designated person reasonably considers it necessary to share the reporting person's identity with, for the purposes of follow-up of the report e.g. another staff member who may have the necessary technical expertise to assist with the investigation. Such persons however are also prohibited from disclosing the identity of the reporting person.

Reports and details of any associated work or investigations will therefore only be shared with a limited number of people on a strict need-to-know basis unless for example, we have an obligation to disclose the information under law in the context of investigations or judicial proceedings, or where it is necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment.

If we consider it necessary to disclose your identity for one of the reasons outlined above, we will inform you in advance of doing so and we will explain the reasons why we consider it necessary unless doing so 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.

In some cases, the nature of the information disclosed may make it difficult to protect the reporting person's identity. In this situation, risks and possible mitigating actions will be discussed with the reporting person.

Should you have any concerns that your identity is not being protected you can make a complaint to the Secretary and Director of Audit who will examine any such notifications and take appropriate action where necessary.

No member of staff, to whom the identity of the reporting person has not been revealed as part of the receipt and follow-up of a disclosure report, should attempt to identify the reporting person. Any such attempts, whether successful or not, will be dealt with under the Office's disciplinary process which is set out in the Civil Service Disciplinary Code.

Please see the section below on 'data protection' for further information on how we maintain the security and confidentiality of any personal information processed as part of a disclosure report.

### **Rights of persons identified in a disclosure**

The identity of any person referred to in a disclosure report to the Office as a person to whom the wrongdoing is attributed or associated with, will be protected by the Office.

The principles of natural justice and fair procedures require that a person against whom allegations are made should be notified of the allegations and be given a fair and impartial hearing. At the same time, the person reporting the wrongdoing is entitled under the protected disclosures legislation to have their identity protected.

The rights of the person identified in a disclosure will be balanced therefore against the obligation to protect the identity of the reporting person.

Where possible, the Office will seek to verify the information in a disclosure by way of documentary evidence.

Where the Office considers it necessary to question or seek information from a person accused of wrongdoing, the person concerned will be given details of the allegation and provided with the opportunity to respond and contest the allegation provided this can be done without revealing the identity of the reporting person. The Office recognises however, that in practice, this may be difficult given the small size of the Office.

In the case of an anonymous disclosure, the person accused of wrongdoing will, where the Office considers it necessary, be given an opportunity to address the contents of the disclosure and any evidence or witness statements gathered as part of the investigation.

A person's right to representation at investigation meetings may arise in exceptional circumstances. Where it does arise, it will be limited to a co-worker or a trade union representative.

While an individual is entitled to obtain their own legal advice, there is no automatic right to legal representation at any investigation meetings and no costs of legal representation will be paid by the Office.

The investigator will consider whether failure to allow legal representation is likely to imperil a fair hearing or a fair result, taking into account the general circumstances of the case including

- a. the seriousness of the charge and of the potential penalty
- b. whether any points of law are likely to arise
- c. the capacity of the person concerned to present their own case and whether they are suffering from any condition that might affect their ability to do so

- d. whether there is any procedural difficulty involved in the case
- e. the formality of the investigation meeting
- f. the need for reasonable speed in conducting the investigation and
- g. the general need for fairness as between the parties.

The rights under the General Data Protection Regulations (GDPR) and the Data Protection Act 2018 of any person identified in a disclosure will be respected. The exercise of the right to information and to access may be restricted or deferred where the Office considers there is a risk that such exercise would be detrimental to its examination of the matter (see 'data protection' section below).

### **Protection for those who make a disclosure**

You will not be disadvantaged for speaking up about a concern, provided you reasonably believe the allegations to be true. If you raise a concern based on a reasonable belief<sup>3</sup> (even if your concern turns out to be unfounded or you were mistaken), you will be protected against reprisals for having raised the concern or for having refused to engage in the perceived wrongdoing. This includes concerns you may have which do not come under the definition of 'wrongdoing' in the Protected Disclosures Act.

The Protected Disclosures Act provides protection from penalisation for workers making a disclosure provided

- the information disclosed came to their attention in a work-related context and
- they reasonably believe the information tends to show relevant wrongdoing as defined in the Act.

Penalisation is defined in the Protected Disclosures Act as ‘*any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report and causes or may cause unjustified detriment to a worker*’. It includes for example, dismissal, unfair treatment or threats of reprisal, loss of promotion opportunity or a negative performance review. A non-exhaustive list of examples from the Protected Disclosures Act of what may constitute penalisation is provided at Appendix A.

The Office commits to ensuring that no staff member who makes a disclosure will suffer any form of penalisation as a result of raising the concern. No action will be taken that affects the staff member to his/her detriment with respect to any term or condition of his/her employment because he/she has made a disclosure.

If you believe you are being penalised in any way for having made a disclosure or the Office has failed to act on your disclosure, you should report this as soon as possible to the Secretary and Director of Audit. You can seek independent advice at any time on dealing with penalisation or a failure to adequately respond to the making of a disclosure.

If a colleague believes that an individual, who has made a disclosure or who has cooperated in the investigation of a reported violation, is suffering harassment, retaliation or any form of penalisation, he/she should inform either (i) the Deputy Director for that Division, (ii) the Deputy Director for Central Services or (iii) the Secretary and Director of Audit, as appropriate.

The Office will assess/investigate all such notifications and take appropriate action where necessary. A manager or staff member, who retaliates in any way against someone who has made a disclosure, will be subject to appropriate disciplinary proceedings.

Section 14 of the Protected Disclosures Act provides that, with the exception of defamation, civil legal action cannot be taken against a worker for making a protected disclosure. Workers can be sued for defamation but are entitled to a defence of “qualified privilege”. This means that it should be very difficult for a defamation case against a worker to succeed if the worker can show they made a protected disclosure in accordance with the Protected Disclosures Act and did not act maliciously. There is no other basis under which a worker can be sued if they have made a protected disclosure in accordance with the Protected Disclosures Act – e.g. for breach of confidentiality.

If an individual makes an allegation with a reasonable belief that the information disclosed showed, or tended to show wrongdoing, which is not confirmed by subsequent investigation, no action will be taken against the individual. However, if the investigation shows, or it subsequently becomes clear, that the allegation has been made maliciously, appropriate disciplinary action will be taken against the individual making the allegation.

Under the Protected Disclosures Act, it is a criminal offence to make a report containing any information that the reporting person knows to be false.

The Office is committed to responding appropriately to any concerns of wrongdoing. The focus will be on the wrongdoing rather than the person making the disclosure. Disciplinary action will be taken against anyone found to have been involved in committing wrongdoing or in its cover up.

A worker who has made a disclosure report, whether or not it has been assessed or investigated, is still required to conduct themselves professionally and to continue to carry out their duties as normal. The worker is not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so.

Normal management of a worker who has made a report does not constitute penalisation. This can include the taking of disciplinary action against the worker for matters unrelated to the substance of the report.

In addition, a worker who has made a report should not take it upon themselves to assume responsibility for promoting a culture of transparency within the Office. While all workers should subscribe to such a culture, the promotion and implementation of such measures is a matter for the Audit Board.

### **Remedies available**

The Protected Disclosures Act provides for specific external remedies for workers who believe they have been penalised for making a protected disclosure. These include

- *a claim for a remedy to the Workplace Relations Commission under the Unfair Dismissals Acts 1997 - 2015: where a worker is dismissed from their employment as a result of making a protected disclosure.*
- *a claim for penalisation before the Workplace Relations Commission: The claim must be brought within six months of the penalisation. The alleged penalisation will be deemed to have been as a result of the reporting person having made a protected disclosure, unless the employer proves that the act or omission was justified on other grounds. The burden of proof therefore lies with the employer.*
- *a claim for injunctive relief in the Circuit Court: The claim must be brought within 21 days of the last instance of penalisation.*

The Protected Disclosures Act sets out a range of criminal offences for breaches of the protections provided by the Act. For example, it is a criminal offence to

- hinder or attempt to hinder a worker in making a report
- penalise or threaten penalisation against a reporting person and associated third parties
- bring vexatious proceedings against any person or associated third party
- breach the duty of confidentiality regarding the identity of reporting persons.

### Review process

A review of any decision or process taken by the Office can be requested by any person affected by the following processes

- a decision, following assessment, to close the procedure or refer the matter to another process
- the conduct or outcome of any follow-up actions (including any investigation) taken on foot of the receipt of a disclosure report
- the conduct or outcome of any investigation into a complaint of penalisation
- any decision to disclose the identity of a reporting person (except in exceptional cases).

A request for review should be submitted to the Secretary and Director of Audit within 10 days of the issue of any formal decision notification letter. The request for review should set out the reason(s) a review is being sought. The review will be carried out by a more senior person to the person who made the original decision and will address the specific issues the applicant feels have received insufficient consideration. The outcome of the review will be final.

### Data protection

Any processing of personal data pursuant to the Protected Disclosures Act will be carried out in accordance with GDPR and data protection legislation.

The Office will adopt sufficient technical and organisational security measures to maintain the security and confidentiality of any information received in a disclosure, so as to protect such information from accidental or unlawful destruction or loss or unauthorised access to or disclosure of the information. These security measures will also apply to any reports or other material generated as a result of enquiries being carried out into the matters contained in any disclosure received.

As part of these measures, access to the information contained in any disclosure received will be restricted to the designated person and those explicitly tasked with enquiring into the matters contained in the disclosure.

In certain circumstances, the rights of data subjects under data protection law may be restricted in respect of their personal data processed for the purposes of the Protected Disclosures Act.

The restrictions will apply, to the extent necessary and for as long as is necessary, to prevent and address any attempt to hinder reporting or to impede, frustrate or slow down follow-up, or attempts to find out the identity of reporting persons. The restrictions will also apply to the extent necessary and proportionate for the purposes of safeguarding the important objectives of general public interest and for the protection of the data subject or the rights and freedoms of others.

The Office will inform the data subject where a restriction is being applied, unless to do so would involve the disclosure of information that might identify the reporting person, prejudice the

effective follow-up of the relevant wrongdoing or prejudice the achievement of any important objectives of general public interest.

A data subject, who has been informed of a restriction by the Office, can lodge a complaint with the Data Protection Commission (DPC) or seek a judicial remedy in relation to such restriction. Contact details for the DPC can be accessed on their website: <https://www.dataprotection.ie>

### Freedom of Information

The Freedom of Information Act 2014 (FOI Act) has been amended by Section 20 of the Protected Disclosures (Amendment) Act 2022. As a result of the amendment, the FOI Act does not apply to a record relating to a report made under the Protected Disclosures Act, whether the report was made before or after the date of the passing of the Protected Disclosures (Amendment) Act 2022.

### Annual report

An anonymised report on the operation of this policy will be provided to each Audit Board meeting. It will include details of the number and type of disclosures received as well as details of any complaints of penalisation against staff who have made disclosures and actions taken in response to each report.

In accordance with section 22 of the Protected Disclosures Act, the Office will provide an annual report to the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation by 1 March each year outlining in respect of the preceding calendar year, the number of disclosure reports received in the year, the number of investigations opened, the number of investigations closed etc.

This information will also be published on the Office's website [www.audit.gov.ie](http://www.audit.gov.ie) by 31 March each year. The information will be provided in a way that protects the identity of all parties involved.

### **Review of policy**

This policy will be reviewed annually by the Audit Board and will be amended if required.

### **Data retention**

The Office's records management policy identifies the retention period for records falling under each of its main business functions. Internal disclosure related records will generally be retained for seven years from completion of the review/investigation after which they will be considered for transfer to the National Archives or destroyed.

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<sup>1</sup> The CSEAS promotes employee wellness and organisational effectiveness by providing a wide range of free and confidential supports to staff and management designed to assist employees to manage work and life difficulties.

<sup>2</sup> <https://www.cseas.per.gov.ie/about-us/faq/>

<sup>3</sup> A worker does not need to be certain about the facts in their disclosure. A "reasonable belief" means that the belief is based on reasonable grounds. The test applied to "reasonable belief" will be an objective test i.e. the disclosure will be assessed based on how a reasonable person would respond to the information available to him or her at the time that the disclosure was made.

## **Appendix A: Key definitions from the Protected Disclosures Act**

### ***Designated person (defined in Section 6A of the Act)***

An impartial person or persons who are competent to follow-up on reports (who may be the same person or persons as the recipient of the report) (in this section referred to as a “designated person”) who will maintain communication with the reporting person and, where necessary, request further information from, and provide feedback to, that reporting person.

### ***Penalisation***

Penalisation means any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report and causes or may cause unjustified detriment to a worker, and, in particular, includes

- a. suspension, lay-off or dismissal,
- b. demotion, loss of opportunity for promotion or withholding of promotion,
- c. transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- d. the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- e. coercion, intimidation, harassment or ostracism,
- f. discrimination, disadvantage or unfair treatment,
- g. injury, damage or loss,
- h. threat of reprisal,
- i. withholding of training,
- j. a negative performance assessment or employment reference,
- k. failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanent employment,
- l. failure to renew or early termination of a temporary employment contract,
- m. harm, including to the worker’s reputation, particularly in social media, or financial loss, including loss of business and loss of income,
- n. 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,
- o. early termination or cancellation of a contract for goods or services,
- p. cancellation of a licence or permit, and
- q. psychiatric or medical referrals.

### ***Person concerned***

‘Person concerned’ means a natural or legal person who is referred to in a report as a person to whom the relevant wrongdoing is attributed or with whom that person is associated.

### ***Prescribed person***

'Prescribed person' means a person prescribed by order under section 7 of the Protected Disclosures Act.

Section 7(2) of the Protected Disclosures Act states that 'The Minister may by order—

- (a) prescribe such persons as, by reason of the nature of their responsibilities or functions, appear appropriate to be recipients of disclosures of relevant wrongdoings falling within the description of matters in respect of which they are prescribed, and
- (b) prescribe in respect of each prescribed person such description of matters as appears appropriate by reason of the nature of the responsibilities or functions of the person.

### ***Relevant wrongdoing***

For the purposes of the Protected Disclosures Act, the following are relevant wrongdoings

- 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,
- h. that a breach of specified EU law set out in the Directive has occurred, is occurring or is likely to occur, or
- i. that information tending to show any matter falling within any of the preceding paragraphs 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.

### ***Reporting person***

'Reporting person' means a worker who makes a report in accordance with the Protected Disclosures Act.

### ***Worker***

For the purpose of the Protected Disclosures Act, a worker means an individual who has acquired information on a relevant wrongdoing in a work-related context. A worker includes

- a. an individual who is or was an employee,
- 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,
- 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).

Civil Servants, members of An Garda Síochána, members of the Permanent Defence Forces and members of the Reserve Defence Forces are also deemed to be workers under the Act.

### ***Work-related context***

‘Work-related context’ means current or past work activities in the public or private sector through which, irrespective of the nature of those activities, persons acquire information concerning a relevant wrongdoing and within which those persons could suffer penalisation if they reported such information.

### ***Disclosure of information***

Disclosure of information is information which in the reasonable belief of the worker tends to show one or more relevant wrongdoings and it came to the attention of the worker in a work-related context. The information you report should disclose facts about someone or something, rather than a general allegation that is not founded on any facts. You should not investigate allegations of wrongdoing or gather additional evidence or information – just tell us the facts that you know.



## THE INTEGRITY AT WORK PLEDGE

The Office of the Comptroller and Auditor General recognises the importance of maintaining an ethical workplace and the valuable contribution of those who raise concerns about wrongdoing. We commit to not penalising, or permitting penalisation against, a worker who reports risks or incidents of wrongdoing and to responding to or acting upon those concerns. The term 'worker' comprehends staff, contractors, consultants, agency staff and interns.

In committing ourselves to this pledge, we will work towards implementing a 'whistleblowing'/ protected disclosures policy and procedures which will:

- a. promote the reporting of wrongdoing or the risk of harm to a responsible person inside the organisation or external bodies as appropriate
- b. provide comprehensive information about the types of disclosures that can be made, by whom and in respect of what
- c. encourage our workers to seek professional advice both prior or subsequent to making a report
- d. assure our workers that any report will be dealt with in the strictest confidence and that their identity or identifying information will not be disclosed to third parties unless required by law or necessary for the purposes of conducting an investigation
- e. provide our workers with sufficient notice and a timely explanation in the event that his or her identity is to be disclosed to a third party
- f. confirm that reports will be acted upon within a reasonable time frame and take whatever remedial action is deemed necessary by the organisation to address any wrongdoing or the risk of wrongdoing that might have been identified in response to the report
- g. commit to keeping any worker who makes a report informed on the progress of investigations
- h. provide for appropriate disciplinary action to be taken against anyone found to have penalised a worker for (i) having reported wrongdoing or (ii) refusing to engage in wrongdoing
- i. commit to record anonymised data each year on (i) the number of reports made to it under the Protected Disclosures Act 2014, (ii) the nature of each report, (iii) the number of complaints of retaliation against workers who have made disclosures and (iv) the action taken in response to each report
- j. share this data (as set out in paragraph i) with senior management, including the Board, or with the Minister of Public Expenditure and Reform (where appropriate)
- k. ensure that our managers and responsible persons are aware of our commitments under this pledge and related policies and procedures and are adequately trained in handling a report
- l. publicise our commitment to the *Integrity at Work* initiative with our workers and other relevant stakeholders.

Details of our Protected Disclosures Policy and Procedures can be found on our website at [www.audit.gov.ie](http://www.audit.gov.ie)

**Seamus McCarthy**  
Comptroller and Auditor General

5 April 2022

**Colette Drinan**  
Secretary and Director of Audit

5 April 2022

## Appendix C: Making a Protected Disclosure – Conditions for Protection under the Act

| Disclosure to                                  | Employer (Internal report)                                                                                                                                                            | Prescribed person (External report)                                                                                                                                                                                                                                                                                        | Commissioner (External report)                                                                                                                                                                                                              | Minister(Other)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | EU Institutions (External report)                                                                                                                                                                                                                                                                 |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Specific section(s) of the Act</b>          | 5, 6, 6A                                                                                                                                                                              | 5, 7, 7A                                                                                                                                                                                                                                                                                                                   | 5, 7, 10B, 10C                                                                                                                                                                                                                              | 5, 8, 10D                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 5, 7B                                                                                                                                                                                                                                                                                             |
| <b>Who does this apply to?</b>                 | A worker of the employer. A worker of another employer where the wrongdoing relates solely/mainly to the conduct of that employer or for which the employer has legal responsibility. | A worker.                                                                                                                                                                                                                                                                                                                  | A worker.                                                                                                                                                                                                                                   | A worker who is or was employed by a public body.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | A worker.                                                                                                                                                                                                                                                                                         |
| <b>Conditions for protection under the Act</b> | Came to attention in work-related context.<br>Reasonable belief that information tends to show relevant wrongdoing.                                                                   | Came to attention in work-related context.<br>Reasonable belief that: <ul style="list-style-type: none"> <li>Information tends to show relevant wrongdoing;</li> <li>Information and any allegations are substantially true; and</li> <li>Relevant wrongdoing relates to matter for which person is prescribed.</li> </ul> | Came to attention in work-related context.<br>Reasonable belief that: <ul style="list-style-type: none"> <li>Information tends to show relevant wrongdoing; and</li> <li>Information and any allegations are substantially true.</li> </ul> | Came to attention in work-related context.<br>Reasonable belief that information tends to show relevant wrongdoing.<br>Meets one of the following conditions: <ul style="list-style-type: none"> <li>Has reported internally and/or externally but reasonably believes no action or insufficient follow-up action taken;</li> <li>Reasonably believes the Head of the public body concerned is complicit in the wrongdoing;</li> <li>Reasonably believes wrongdoing may constitute imminent or manifest danger to public interest.</li> </ul> | Came to attention in work-related context.<br>Reasonable belief that: <ul style="list-style-type: none"> <li>Information on breaches reported was true at time of reporting; and</li> <li>Information falls within the scope of EU Directive 2019/1937 (the Whistleblowing Directive).</li> </ul> |

| Revision and approval history |                                |
|-------------------------------|--------------------------------|
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