



# Protected disclosures

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Related policies/standards	Date
Department of Justice and Equality Protected Disclosures Policy	
Protected Disclosures Act 2014	

Legacy reference of policy	Date for review of policy	Date of issue/amendment
-	30/10/2016	30/10/2015

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## IPS Policy for Protected disclosures

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## 1. Aim of this policy

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- 1.1 To set out the Irish Prison Services policy on Protected Disclosures in the workplace.
- 1.2 This Policy is an adaptation of the Department of Justice and Equality (the Department) Protected Disclosures in the Workplace policy.
- 1.3 The Protected Disclosures Act 2014 provides a robust statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in their workplace, in the knowledge that they can avail of significant employment and other protections if they are penalized by their employer or suffer any detriment for making such disclosures.
- 1.4 This Policy shall be considered a part of the Irish Prison Service (IPS) and the Departments approach to good corporate governance ensuring that high standards are maintained and that a culture of “speaking up” is encouraged.

## 2. Purpose of this policy

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- 2.1 To encourage all workers to raise internally concerns about possible wrongdoing in the workplace so that these concerns can be investigated following the principles of natural justice and addressed in a manner appropriate to the circumstances of the case.
- 2.2 To ensure that all disclosures of wrongdoing in the workplace will, as a matter of routine be the subject of an appropriate internal investigation followed by appropriate actions based on the investigation findings thereby ensuring workers will not have a need to, or a basis for, seeking to access the remedies of the Protected Disclosures Act 2014.
- 2.3 The IPS and the Department will ensure that there is a mechanism to enable all workers to voice concerns in good faith internally in the confidence that in so far as possible:
  - their communications will be treated with confidentiality by the recipient
  - their concern will be investigated where that is considered appropriate
  - the person reporting will receive protection from victimisation or harassment
  - the person reporting will not be subject to retribution or disciplinary proceedings

- 2.4 The policy relates to the reporting of relevant wrongdoings as defined in the Protected Disclosures Act 2014 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 or other HR procedures

### 3. Scope of this policy

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- 3.1 This policy applies to all staff of the IPS.
- 3.2 This policy refers to “workers” throughout the document. This term covers all persons who are employees whether temporary, long term contractors, agency workers or any other persons in receipt of payment for service to the IPS. Retired employees or ex-workers may also report under this policy.

## 4. Procedures for implementation

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### 4.1 What is a Protected Disclosure?

4.1.1A Protected Disclosure is as defined in the Protected Disclosures Act 2014, being a disclosure of relevant information related to wrongdoing made by a worker in the manner specified under the act.

4.1.2A worker must reasonably believe that the information disclosed tends to show one or more “relevant wrongdoings”

4.1.3The wrongdoing must come to the workers attention in connection with his or her employment. For example, a disclosure will not be protected if it relates to matters in someone’s personal life outside and unconnected to the workplace.

4.1.4As it is not possible to know at the time of a disclosure whether the disclosure would subsequently be deemed protected under the 2014 Protected Disclosure Act, all disclosures will initially be treated as if they meet the criteria under the Act.

### 4.2 What type of disclosure is covered by this policy?

4.2.1A Protected Disclosure involves the reporting of information which, in the reasonable belief of the worker making the report, is true and tends to show that one or more of the following relevant wrongdoings has been committed:

- a) Unlawful or improper use of public funds or resources;
- b) Financial misconduct or fraud;
- c) Corruption, bribery or blackmail;
- d) Failure to comply with a legal or regulatory obligation;
- e) Endangerment of the health and safety of employees and clients;
- f) The commission of a criminal offence;
- g) Miscarriage of justice;
- h) Gross negligence or gross mismanagement by public bodies;
- i) The concealment of any of the above;

### 4.3 What type of disclosure is not covered by this policy?

4.3.1This policy does not cover matters of private interest, i.e. personal complaints or personal grievances. Matters of a personal nature should continue to be reported to the Staff and Corporate Services Directorate under the relevant Human Resource policy.

### 4.4 How can I make a disclosure?

4.4.1 As a first step, a worker, believing reasonably, that a wrongdoing exists in the workplace, should consider reporting the matter to his/her:

- a) Line Manager at Assistant Governor Level/HEO level or above  
If the worker would be uncomfortable or otherwise reluctant to report to his/her manager, then they can report the matter to:
- b) The next highest level of management up to and including appropriate Director/Campus Governor/Director General  
However, if for any reason the worker feels it is appropriate to report a wrongdoing to the persons above, then s/he should report these concerns to:
- c) The Head of Internal Audit  
Where a worker has reported to line management and is dissatisfied with the response/outcome of line management's investigation then s/he retains the right to further report the concerns to the Head of Internal Audit.

4.4.2 Workers may alternatively choose to make a report directly to an appropriate external regulatory authority. However, they should remain cognisant of their confidentiality duty to the IPS and the Department and should consider whether by-passing the internal procedures is a reasonable course of action.

4.4.3 Reports or concerns expressed anonymously will be considered at the discretion of the Head of Internal Audit. In exercising this discretion, the Head of Internal Audit will take the following into account:

- a) The seriousness of the issues raised,
- b) The credibility of the concern,
- c) The likelihood of confirming the allegation from attributable sources.

4.4.4 Anonymous reports will be taken seriously however the effectiveness of any investigation may be limited where an individual chooses not to be identified. The IPS and the Department strongly encourage staff to identify themselves in making a report to facilitate the investigation.

4.4.5 Workers should not endeavour to find proof of their suspicion, if their concern is based on a reasonable belief, the worker should report under this policy.

4.4.6 As may be appreciated, written correspondence is preferred to verbal as there is less scope for misunderstandings arising. Verbal correspondence will be accepted but it should be noted that verbal correspondence may carry less weight in considering whether the issue should be forwarded for full investigation.

4.4.7 The report can be submitted on the template at Appendix 1 and should include the following at a minimum:

- a) Date Submitted
- b) Subject
- c) Detail of Concern
- d) Detail of whether the concern was previously raised and to whom

4.4.8 The detail of the disclosure should be in sufficient detail that a person without prior knowledge would understand the issue.

4.4.9 Reports should be submitted to an appropriate person as outlined in section 8 above. Where it is intended to communicate the concern directly to the Head of Internal Audit, then the report can be forward to:

The Head of Internal Audit,  
51 St Stephens Green,  
Dublin 2.

Phone: 016028499.

Email: [audit@justice.ie](mailto:audit@justice.ie)

4.5 The process of an assessment and investigation will be as follows:

4.5.1 The objective of a preliminary investigation is to ascertain whether or not, the concerns reported have occurred. The IPS will ensure that Investigators will at all times be cognizant of, and comply with principles of natural justice.

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

- a) All written reports submitted by a named worker will be examined
- b) Verbal reports will be examined if the appropriate person or the Head of Internal Audit considers that there is enough information supplied to carry out an investigation. Anecdotal evidence may not be considered strong enough to undertake an investigation. Verbal reports will be documented by the recipient.
- c) Anonymous reports will be examined subject to the discretion of the Head of Internal Audit.
- d) In exercising this discretion, the factors that may be taken into account would include
  - i. The seriousness of the issues raised
  - ii. The credibility of the concern
  - iii. The likelihood of confirming the allegation from attributable sources

4.5.3 In line with the reporting cascade, the issue will be investigated by the line manager reported to.

- 4.5.4 Queries regarding this policy and any guidance required in relation to conducting an investigation should be sought by Line Managers from the Assistant Principal in charge of Pensions and Remuneration or from the Head of Internal Audit.
- 4.5.5 Where the line manager considers he is not capable of dealing with the particular allegation, he may refer the matter to the Head of Internal Audit who will organize for the issue to be investigated by either a member of the Internal Audit team (for simple issues), or by appropriate qualified professionals – either internal or external personnel.
- 4.5.6 Where it is proposed to refer the matter to an internal person, other than a member of the Internal Audit Team, for investigation, the worker reporting the concern will be notified of the name of the investigating person and may request, if not comfortable with the named individual investigating the claim, that the matter be referred to another person.
- 4.5.7 If not already notified under the previous paragraph, the person who has made the disclosure will be advised of the name and contact details of the person (internal or external) who is handling the matter and may be asked to provide additional assistance is required.
- 4.5.8 If on preliminary examination, the allegation is judged to be wholly without substance or merit, the allegation may be dismissed and the person who made the report will be informed.
- 4.5.9 If, on preliminary examination, there appears to be prima facie substance to the allegation, the matter may:
- a) Be the subject of a full investigation,
  - b) Be referred to an outside body including An Garda Síochána,
  - c) Be referred to the Staff and Corporate Services Directorate for investigation under the appropriate Human Resource Policy.
- 4.5.10 Any disclosures forwarded for full investigation will be thoroughly investigated including interviews with all the witnesses and other parties involved. Statements from all parties shall be recorded in writing and a copy given to the interviewee for confirmation



- 4.5.11 The IPS will need to take great care in providing information to the person who has made the disclosure to ensure that it does not breach the legal rights of any person who has been accused of wrongdoing. Providing information to the person who has made the disclosure might compromise the investigation of the case in some circumstances. The worker who has made the disclosure will be provided with periodic feedback for purposes of reassurance that the investigation is being progressed. At the conclusion of the process the worker who has made the disclosure will be informed of the general outcome of the investigation.
- 4.5.12 It is important to note that the principles of natural justice do not require a person associated with an allegation of wrongdoing to be notified of the receipt of an allegation. Nor does the person accused of the wrongdoing have the right to know the identity of the worker who has made the report.
- 4.5.13 Where an investigator wishes to question or seek information from the person accused of wrongdoing, the subject is entitled to be given details of what is alleged and given the opportunity to respond and to contest the allegation.
- 4.5.14 In the interests of natural justice, the person(s) against whom the allegation is made will be informed in writing of the allegation and all of the supporting evidence, and will be allowed full opportunity to comment at an appropriate stage in the process and before the investigation is concluded.
- 4.5.15 The person accused of wrongdoing is entitled to be informed of the outcome of the investigation and is entitled to a copy of the investigation report if it concludes that a wrongdoing has occurred.
- 4.5.16 All reasonable efforts will be made to keep the identity of the person making a report confidential. However it is important to be aware that it may not be possible to keep the identity confidential as in certain circumstances, the person may be required to co-operate with investigating authorities or, for example, give evidence in Court or to another forum. However, in accordance with the objective of section 16 of the Protected Disclosures Act 2014, the identity of the persons making a disclosure will be protected and it will be a disciplinary offence for persons to disclose improperly the identity of such a person or to seek to establish the identity of a person who has made a disclosure.
- 4.5.17 A worker should not hesitate to contact the Departments Internal Audit Unit for informal discussion in relation to the process of reporting and of conducting investigations under this policy.

- 4.5.18 If a worker is unsure whether to use the procedure or s/he wants independent advice at any stage, s/he is encouraged to obtain external independent advice. Transparency International Ireland provides independent advice to workers.
- 4.6 All reasonable steps will be taken to protect workers from penalisation for having made a Protected Disclosure.
- 4.6.1 Workers should inform the Director General or the Head of Internal Audit if they have experienced any act of penalisation by any employee of the IPS as a result of having made a protected disclosure.
- 4.6.2 The IPS and the Department will not tolerate any penalisation of workers who make a report under this policy and will treat any acts of penalisation or attempted penalisation as serious misconduct under the Prison (Disciplinary Code for Officers) Rules, 1996 or the Civil Service Disciplinary Code 2006, or where the Code does not apply, as a serious disciplinary matter.
- 4.7 The following are potential outcomes on conclusion of the investigation of the matter disclosed;
- 4.7.1 The disclosure is upheld or partly upheld leading to:
- a) The malpractice being stopped and the system weaknesses identified and addressed or the concern being addressed in so far as is reasonable
  - b) Disciplinary action being taken under the Prison (Disciplinary Code for Officers) Rules, 1996 or the Civil Service Disciplinary Code 2006 against the wrongdoer depending on the results of the investigation
  - c) The matter being referred to an outside body, including An Garda Síochána.
- 4.7.2 Where the disclosure is not upheld, no action if the allegation made in good faith, proves unfounded.
- 4.7.3 A disclosure made in the absence of a reasonable belief will not attract the protection of the 2014 Act and this may result in disciplinary action against the discloser. In addition, disclosure of a wrongdoing does not confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing.
- 4.7.4 If the outcome of the investigation of a disclosure is not to the satisfaction of the worker that reported the issue, then s/he has the right to make a disclosure to the appropriate legal or investigative agency outside of the IPS or the Department in line with the provisions of the Protected Disclosures Act 2014.

4.8 If the worker who has made the disclosure is not satisfied with the outcome of the investigation, the IPS or the Department will engage an external reviewer to re-evaluate the findings and consider any additional evidence provided.

4.9 The responsibilities of all staff are set out in the table below

<b>All workers</b>	To ensure that reports are made where appropriate; and that they are valid.
<b>Line Managers</b>	To investigate and to follow the appropriate steps once a report is made. <i>Line management must also send outline details of the Protected Disclosures to Internal Audit for statutory reporting purposes</i>
<b>The Head of Internal Audit</b>	Where an investigation is referred, to investigate, or organise an investigation, and to follow the appropriate steps once a report is made. This is subject to the Head of Internal Audit being satisfied that the concern merits investigation.
<b>Staff and Corporate Services Directorate</b>	To ensure that all workers are informed of the Protected Disclosures Reporting Policy annually.

<b>Investigator (if appointed)</b>	To investigate and to follow the appropriate steps once a report is made and to report to the Head of Internal Audit as appropriate.
<b>Management Board</b>	To review and assess how the policy is working and to make adjustments to policy as appropriate.

- 4.10 Confidential records will be kept of all matters raised through this Protected Disclosures Policy and the Departments Management Board will receive periodic reports on its effectiveness.
- 4.11 The Policy forms part of the internal control procedures and as such will be reviewed and updated (if necessary) on a regular basis as part of the review of internal controls and procedures. Any changes will be notified to staff.
- 4.12 The Head of Internal Audit will prepare and publish an Annual Report, on an anonymised basis, in relation to the disclosures received and dealt with under this policy in the previous year in line with the requirements of Section 22 of the Protected Disclosures Act 2014. This report is to be “in a form that does not enable the identification of the persons involved”.

### **Context of the policy**

- 4.13 The purpose of the Protected Disclosure Act 2014 is to provide a robust 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.
- 4.14 The Protected Disclosures Act 2014 provides for a stepped system of channels through which a worker can make a disclosure if s/he wishes to attract the protections under the act. A worker may communicate his or her concerns to
- 4.14.1 An employer (Section Error! Reference source not found. and Section Error! Reference source not found. of this Protected Disclosures Policy)
- 4.14.2 To a prescribed person as set out in Statutory Instrument 339 of 2014 (Protected Disclosures Act 2014 (Section 7(2) Order 2014). This is a formally designated person that can receive a report in respect of matters in their sphere of responsibility e.g. the Director General of the Environmental Protection Agency can receive reports on all matters relating to the protection of the environment in the State.

- 4.14.3 To a Minister of the Government (regarding a matter within their functional ambit or in the case of a worker in a Public Body)
  - 4.14.4 Externally to others e.g. reporting to the Comptroller and Auditor General, or to a public representative etc.
- 4.15 This is the context in which our Protected Disclosures policy sits. A worker is encouraged to use the internal confidential reporting structure in the first instance. It is only if the internal structures fail the worker or the worker does not have confidence in the internal structures that the worker may feel obliged to report an issue outside of the organisation. In this case, the worker is afforded some protection under the Protected Disclosures Act 2014.
- 4.16 It should be noted that there are certain prerequisites for entitlement to redress under the act, being:
- 4.16.1 That the worker has been penalised or is threatened with being penalised at the hands of the employer for having made a disclosure
  - 4.16.2 That the disclosure is a protected disclosure under the terms of the act (this will not be known at the time the disclosure is made).

## 5. Related policies /standards

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Department of Justice and Equality Protected Disclosures Policy

Protected Disclosures Act 2014

## 6. Definitions

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IPS – Irish Prison Service

The Department – The Department of Justice and Equality

The Act – The Protected Disclosures Act

## Appendices

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### Appendix I –

Protected Disclosures Reporting Form

### Appendix II –

Internal Reporting Workflow

## Appendix 1: Protected Disclosures Reporting Form

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The Irish Prison Service and the Department of Justice and Equality welcome the reporting of disclosures under the Protected Disclosures Policy. The Protected Disclosures Policy is part of the IPS and the Departments approach to good governance as it seeks to deter, prevent and detect fraud and other significant malpractices. Before completing this form, you should:

- Consider whether the Protected Disclosures Policy is the appropriate policy under which to report your concern (matters of private interest may be reported under relevant grievance procedures or the IPS Anti-Harassment, Sexual Harassment and Bullying Policy through the Staff and Corporate Services Directorate)
- Ensure that the report is being made in relation to a matter that you have reasonable grounds to be concerned about.

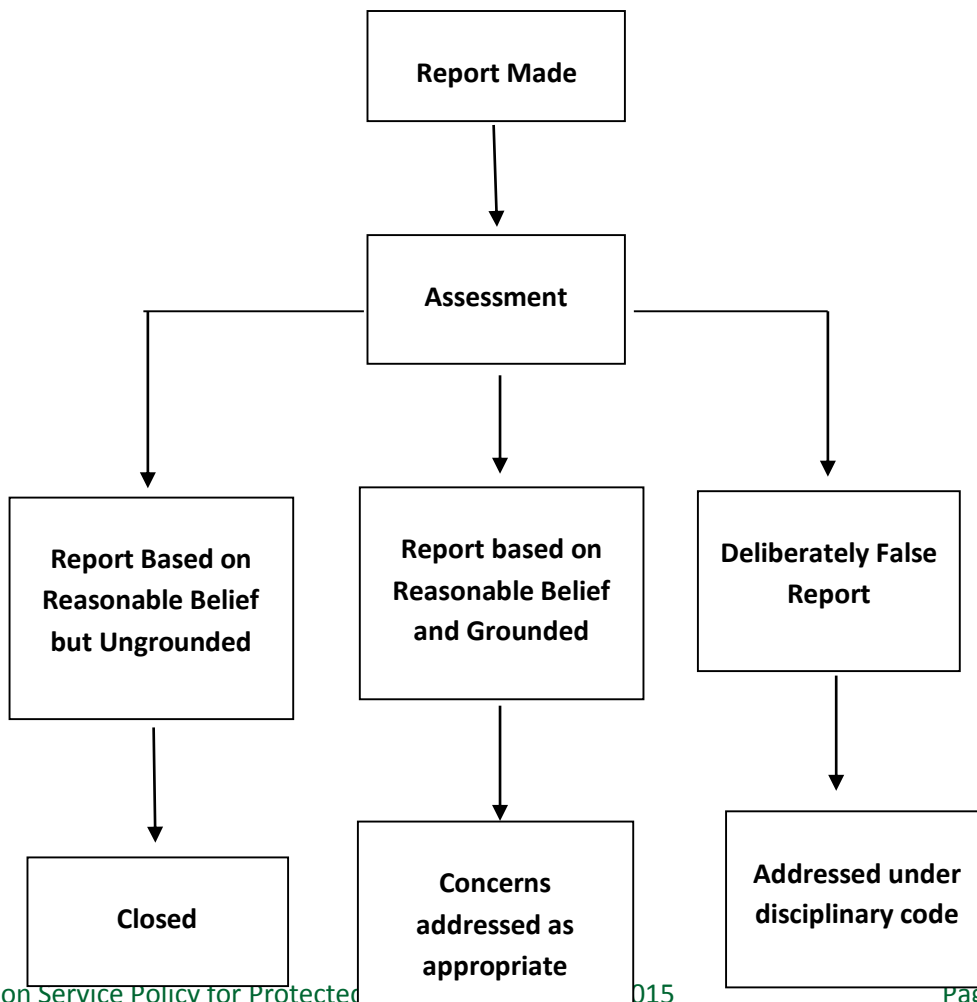
Reports should be submitted to appropriate person (through line management) as outlined in the Protected Disclosures Policy. Where it is intended to communicate the concern directly to the Head Internal Audit then the report can be forwarded to: The Head of Internal Audit, 51 St Stephen's Green, Dublin 2, Phone: 01 6028499, Email: [audit@justice.ie](mailto:audit@justice.ie)

<b>Name of Worker reporting the concern:</b>  (Anonymous reports will be considered but are not encouraged).		
<b>Phone number:</b>		

<b>Email Address</b>		
<b>Details of Concern/Disclosure including dates, if applicable:</b>  (Care should be taken to only include the name(s) of individual(s) directly relevant to the report).		
<b>Has the concern been reported previously:</b>  (If so, please specify when and to whom).		

## Appendix 2: Internal Reporting Workflow

The following diagram summarises the life cycle of disclosure from the time the report was made, through the assessment phase and thereafter



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