



## Protected Disclosures Policy

Policy Index No	Policy Sponsor	Pages	Approved by	Date
041 043 X XXX	Director General	-	Director General	21/12/2022
Related Policies / Standards				Date
041 043 S 001 Reporting of Wrongdoings				
041 043 S 002 Assessment and Investigation of Wrongdoings				
041 043 S 003 Protection from Penalisation				
Legacy Policy Reference	Date for Review of Policy*	Date of Issue / Amendment		
	01/10/2023	1/1/2023		

\*Note, where the policy is not reviewed on the specified date for Review of Policy, the policy will remain in force and is applicable up to the date from which it is replaced and/or amended subject to the review having taken place.

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## 1. Introduction

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- 1.1 The disclosure of wrongdoing within the Irish Prison Service (the “**IPS**”) is welcomed and the Director General and leadership teams are fully supportive of such disclosures.
- 1.2 In line with the Protected Disclosures Act 2014, the IPS has received disclosures by operating under disclosure policies since 2015, initially through the Department of Justice policy and subsequently, its own policy which has been in place since 2018. These policies have aimed to provide all employees with clear reporting structures and supports to disclose wrongdoing.
- 1.3 The Protected Disclosures (Amendment) Act 2022 (“**Amendment Act**”) commences on 1 January 2023 and this policy reflects the legislative changes in this Amendment Act.
- 1.4 For the purposes of this policy, the Protected Disclosures Act 2014 as amended by the Amendment Act will be referred to as “**the Act**”.

## 2. Aim and Purpose of this policy

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- 2.1 This policy and supporting procedures sets out the guiding principles for the IPS to adhere to in order to ensure that all “workers” as defined in the Act, are enabled and encouraged to make disclosures of wrongdoing, and are afforded the protections as defined by the legislation.
- 2.2 This policy and supporting procedures seek to promote a culture of openness and accountability in the IPS.
- 2.3 This policy and supporting procedures provide for clear mechanisms for reporting wrongdoings and ensure that all disclosures will be subject to assessment and, where appropriate, investigation and necessary action.
- 2.4 This policy includes the Integrity at Work Pledge signed by the Director General on behalf of the IPS, to ensure that workers reporting wrongdoings will not face penalisation and that appropriate action will be taken in response to protected disclosures. A copy of this pledge is attached at Appendix 1.

## 3. Scope of the Policy

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- 3.1 This policy and all related procedures apply to “workers” who disclose relevant information as defined in the Act.

3.2 “**worker**” as defined in the Act 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.

## 4. What is a Protected Disclosure?

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- 4.1 For the purposes of the Act and these policies and procedures, a **“protected disclosure”** is a disclosure of information which, in the reasonable belief of a worker, tends to show one or more relevant wrongdoings; which came to the attention of the worker in a work-related context; and is disclosed in the manner prescribed in the Act.
- 4.2 **“Relevant Information”** contained in a disclosure should contain a statement which shows or tends to show one or more relevant wrongdoings.
- 4.3 A worker should have a **“reasonable belief”** that the information disclosed shows or tends to show wrongdoing. This does not mean that the belief must be correct. Workers are entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.
- 4.4 The following are defined as **“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 or,
  - 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.

4.5 It is immaterial whether a relevant wrongdoing occurred, occurs or would occur in Ireland or elsewhere and it is also immaterial, whether the law applying to the relevant wrongdoing, is that of Ireland or that of any other country or territory.

4.6 The information does not need to become known as part of the workers own duties, or even relate to the workers own employer/contractor, as long as the information comes to the attention of the worker in a work related context. The possibility of penalisation of the worker for reporting information will be a factor in determining if the context is a work-related context.

**“In a work related context”** means current or past work activities in the public or private sector through which, irrespective of the nature of these activities, the worker acquires information concerning a relevant wrongdoing, and within which the worker could suffer penalisation for reporting the information.

4.7 A disclosure made under this Act may name persons alleged to be involved in or otherwise connected with the wrongdoing reported. Such persons – referred to as **“persons concerned”** – also have certain protections under the Act.

4.8 Persons who assist the reporting person in making a disclosure are also entitled to certain protections under the Act. These persons are referred to as **“facilitators”**.

## 5. Procedures for Implementation

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5.1 The following resources provide the current framework in which disclosures of wrongdoing are to be reported:

- the [Protected Disclosures Act 2014](#)
- the [Protected Disclosures \(Amendment\) Act 2022](#)
- Department of Public Expenditure and Reform, “Interim Guidance for public bodies and prescribed persons, November 2022” [“DPER Guidance”](#)

5.2 Detailed Standard Operating Procedures on the reporting, assessment and investigation of wrongdoings and protection from penalisation support the implementation of this policy:

- 041 043 S 001 Reporting of Wrongdoings
- 041 043 S 002 Assessment and Investigation Procedures
- 041 043 S 003 Protection from Penalisation

5.3 The Irish Prison Service is a member of the Integrity At Work Programme (“IAW”), an initiative of Transparency International (“TI”) Ireland. The IAW is aimed at promoting a safer working environment for people who speak up about wrongdoing. A guide to making a protected disclosure is available at:

<https://transparency.ie>

5.4 As part of its commitment to protecting workers who make protected disclosures, the Irish Prison Service has also signed and complies with the Integrity at Work Pledge to ensure that workers reporting wrongdoings will not face retaliation and that appropriate action will be taken in response to protected disclosures. A copy of the [Integrity at Work Pledge](#) is attached at **Appendix 1**.

5.5 Nothing in this policy or supporting procedures will limit the protections and rights of all persons concerned provided for in current legislation.

## 6. Responsibilities

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6.1 Overall responsibility for this policy and internal reporting procedures lies with the Director General of the IPS.

6.2 Oversight of this policy rests with the Directors Leadership Team.

6.3 Day-to-day responsibility of the internal reporting procedures is designated to the Protected Disclosures Manager.

6.4 The Governor 1 Prison Support and Development is designated to assist in promoting and driving a culture of speaking up throughout the IPS.

6.5 The responsibility for promotion of the culture of transparency lies with the senior management of the IPS and not with workers making disclosures.

## 7. Related Policies and Procedures

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7.1 This policy and supporting procedures should also be read in conjunction with the following documents (links attached) to ensure that the issue being reported on does not fall within an existing code of practice or that it should be dealt with under another process, such as a grievance or through other recourse mechanisms:

- Grievance procedure

- Civil Service Disciplinary Code revised in accordance with the Civil Service Regulation (Amendment) Act 2005 19/2016:- [Civil Service Disciplinary Code](#) revised in accordance with the Civil Service
- [Civil Service Code of Standards and Behaviour](#)
- [Circular 09/2009: Civil Servants and Political Activity Conduct](#)
- Computer Usage and Access Policy
- Protection of Personal Data Code of Practice
- “Dignity at Work” an anti-bullying, harassment and sexual harassment policy

## 8. Supports and Information

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- 8.1 Independent and confidential advice is available to workers (who have made or are considering making a disclosure) via TI Ireland’s speak up helpline at 1800 844 866, Monday to Friday 10am to 6pm.
- 8.2 The Employee Assistance Programme and the independent counselling service are available at all times to Irish Prison Service employees, including those who make a protected disclosure and those involved in the investigation of a protected disclosure.
- 8.3 The EAP can be contacted by phone 043 3335316, by email [eapsupport@irishprisons.ie](mailto:eapsupport@irishprisons.ie) or by contacting your local prison SSO. Workers can also text PRISON to 50808 which is a free anonymous 24/7 messaging service
- 8.4 Inspire workplaces can be contacted on 1800 817433, 24/7 365 days a year. Their website can be accessed on <https://www.inspiresupporthub.org>

## 9. Reporting

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- 9.1 In accordance with its obligations under [Section 22](#) of the Act and in line with the DPER guidance, no later than 1 March each year, the Irish Prison Service will prepare and publish an annual report in relation to the previous year. This report will be provided to the Minister for Public Expenditure and Reform.
- 9.2 The IPS report shall be published on [www.irishprisons.ie](http://www.irishprisons.ie) and in a form which does not enable the identification of persons involved in the protected disclosures.



## 10.Data Protection

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10.1 In accordance with the Act, all personal data shall be processed in accordance with applicable data protection law. This includes, inter alia, the General Data Protection Regulation (GDPR).

10.2 The Act provides a general lawful basis for the collection and processing of such personal data. In certain circumstances, and where necessary and proportionate, the rights of data subjects under data protection law are restricted in respect of their personal data processed for the purposes of the Act, including receiving, dealing with or transmitting a report of a disclosure or follow-up on such a report.

## 11.Freedom of Information

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11.1 Section 42 of the Freedom of Information Act 2014 (the “FOI Act”) has been amended by the [Section 20 of the Protected Disclosures \(Amendment\) Act 2022](#). As a result of this amendment, the FOI Act does not apply to a record relating to a report made under the Act, whether the report was made before or after the date of the passing of the Protected Disclosures (Amendment) Act 2022. Records concerning a public body’s general administration of its functions under the Act are subject to FOI, however.

## 12.Criminal Offences

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12.1 [Section 24 of the Protected Disclosures Amendment Act](#) sets out a range of criminal offences for breaches of the protections provided by the Act.

12.2 A person commits an offence if they:

- I. hinder or attempt to hinder a worker in making a report;
- II. penalise or threaten penalisation, or causes or permits any other person to penalise or threaten penalisation against a reporting person, a facilitator, a third person who is connected to the reporting person and who could suffer work related penalisation, or a legal entity the reporting person owns or works for or is otherwise connected with;
- III. bring vexatious proceedings against any person or legal entity referred to at II;
- IV. breach the duty of confidentiality regarding the identity of reporting persons;

- V. make a report containing any information that the reporting person knows to be false, or
- VI. fail to comply with the requirement to establish, maintain and operate internal reporting channels and procedures.

12.3 If an offence is committed by a public body, and is committed with the consent of, or is attributable to the neglect on the part of a director, manager or other officer of the public body, that person will also be liable for prosecution.

12.4 On conviction, fines up to €250,000 or imprisonment for up to 2 years, or both, may be imposed.

### **13. Non- Restriction of Rights**

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13.1 The Act provides that it is not permitted to have clauses in agreements that prohibit or restrict the making of protected disclosures, exclude or limit the operation of any provision of the Act, preclude a person from bringing any proceedings under, or by virtue of, the Act and / or preclude a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.

### **14. Review**

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14.1 The IPS is committed to ensuring that this policy and supporting procedures are reviewed annually or more regularly as required to ensure that they reflect best practice and any new changes in the law.

14.2 The Head of Internal Audit of the Department of Justice will monitor the operations of these procedures on an ongoing basis and report to the Audit Committee on their findings.

### **15. Appendices**

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#### **Appendix 1 - Integrity at Work Pledge**

## Appendix 1



### THE INTEGRITY AT WORK PLEDGE

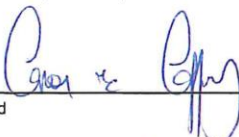
The Irish Prison Service recognises the importance of maintaining an ethical workplace and the valuable contribution of those who raise concerns about wrongdoing. We commit to not penalising, or permitting penalisation against, a worker\* who reports risks or incidents of wrongdoing and to responding to or acting upon those concerns.

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. Additionally, the organisation commits 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.

\* "Worker" refers to staff, contractors, consultants, agency staff and interns

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

  
Signed

Director General 30/03/21  
Position Held Date

  
Signed

Director Corporate Services 30/03/21  
Position Held Date