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Protected Disclosures Policy (Internal Workers)

Mental Health Commission

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1. Introduction and Policy Statement

1.1 Introduction

The purpose of this document is to set out the Mental Health Commission's (the "**Commission**") policy on protected disclosures in the workplace under the Protected Disclosures Act 2014 as amended ("**the 2014 Act**"). The vast majority of concerns that staff might experience in their day to day working environment can be addressed through normal workplace reporting. This particular policy refers to specific wrongdoings as defined within the legislation.

The 2014 Act provides a statutory framework within which workers can raise concerns regarding potential wrongdoing that have come to their attention in a work-related context in the knowledge that he/she can avail of significant employment and other protections if he/she is penalised by their employer or suffer any detriment for doing so.

1.2 Policy Statement

This policy expresses the Commission's commitment to:

(a) addressing concerns about wrongdoing that may arise and,
(b) protecting workers who make reports under this policy.

The Commission is committed to creating a workplace culture that encourages the making of protected disclosures and provides protection for reporting persons. This policy sets out the process by which a worker can make a disclosure, what will happen when a disclosure is made and what the Commission will do to protect a reporting person.

A number of disclosure options are available under the 2014 Act as set out below, however workers are encouraged to make any disclosures internally under this procedure in the first instance. The identity of reporting persons will be protected to the greatest extent possible in accordance with the 2014 Act and reporting persons are protected from penalisation as a result of making a disclosure.

1.3 Scope

This policy is intended to provide a safe and secure mechanism for workers who may wish to make a protected disclosure.

This policy relates to every instance where a worker becomes aware of information in a work-related context, that tends to suggest that a wrongdoing has occurred, is occurring or is likely to occur either within the Commission or in connection with the Commission's work.

A separate Commission policy provides a mechanism for workers whose employer is not the Commission and who wish to make a protected disclosure of information to the Commission, in specific circumstances. This Protected Disclosures Policy (External Workers) can be found here.

Protected disclosures that are made to the Commission and that relate to wrongdoing outside the Commission (and outside the Commission's remit) cannot be investigated by the Commission, but the makers of such disclosures shall not be penalised for making such disclosures.

2. Definitions

In this policy, expressions that are defined in the 2014 Act have the same meaning as in the 2014 Act except where the contrary intention appears.

In particular, in this Policy the expressions "employee", "employer," "penalisation," "protected disclosure", "relevant information," "relevant wrongdoing", "work-related context", "reporting person" and "worker" have the same meanings as in the 2014 Act : https://revisedacts.lawreform.ie/eli/2014/act/14/revised/en/html

In some cases, this policy provides summaries, clarifications, explanations or illustrations of some such expressions for ease of understanding, but these do not affect the meaning of such expressions.

Reporting person: A worker who discloses information in relation to suspected wrongdoing**.** This expression includes a worker who makes a disclosure that is later established not to be a "protected disclosure" as defined.

Designated Person (DP): An impartial person or persons designated, who are competent to follow-up on reports and who will maintain communication with the reporting person and, where necessary, request further information from, and provide feedback to, that reporting person. For the Commission, this role is carried out by Joanna Macklin (or such other person as the Commission shall from time to time nominate for this purpose).

Reasonable Belief: Where there are reasonable grounds to believe that a wrongdoing has occurred. It does not mean that the belief has to be correct, so long as the belief was based on reasonable grounds.

The expression "**worker**", means an individual who acquired information on relevant wrongdoings in a work-related context and who is or was: an employee of the Commission; an independent contractor to the Commission, whether or not the work/services were provided personally by the individual to the Commission; an agency worker; provided with work experience under a training course or programme or with training for employment otherwise than under an employment contract; a member of the administrative, management or supervisory body of the Commission including non-executive members; or a volunteer.

A worker also includes an individual who acquires information on a relevant wrongdoing during a recruitment process, and an individual who acquires information on a relevant wrongdoing

during pre-contractual negotiations (other than a recruitment process). For the purposes of this Policy, the Commission is the "employer" of all such "workers."

3. Differentiating between Protected Disclosures and Personal Complaints

3.1 What is a Protected Disclosure?

A protected disclosure is defined in the 2014 Act. In summary, it is disclosure of information by a worker which, in the reasonable belief of the worker, tends to show one or more relevant wrongdoings, which came to the attention of the worker in a work-related context and is disclosed in one of the ways prescribed in the 2014 Act.

For the purpose of the 2014 Act, information is 'relevant information' if;

- in the reasonable belief of the worker, it tends to show one or more 'relevant wrongdoings', and
- it came to the attention of the worker in a work-related context.

A work-related context is any current or past work activities where the worker acquires information concerning a relevant wrongdoing and within which the worker could suffer penalisation for making a disclosure.

The motivation of the reporting person is not taken into account when determining if a disclosure is a protected disclosure. A reporting person must have a "reasonable belief" and will not be penalised if that reasonable belief turns out to be incorrect. Disclosure of a wrongdoing does not necessarily confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing.

3.2 Personal Complaints vs. Protected Disclosures

A protected disclosure involves the disclosure of information[1] which, in the reasonable belief of the worker making the disclosure, shows that one or more of the following relevant wrongdoings has been committed or is likely to be committed:

(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

[1] In general, the purpose of the 2014 Act is to promote the public interest by encouraging disclosures of information that tends to expose a relevant wrongdoing. The reporting person normally does not need to demonstrate that the disclosure is in the public interest – the protection of the public interest is implicit in the definition of "relevant wrongdoing". However, disclosure of purely personal grievances that do not expose "relevant wrongdoing" is not protected by the 2014 Act.

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 any of the laws of the European Union identified in Article 2(1) of Directive 2019/1937 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.

All workers are encouraged to raise genuine concerns about possible wrongdoing at the earliest opportunity, and in an appropriate way. It should be noted that it is immaterial whether a relevant wrongdoing occurred, occurs or would occur in Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other country or territory.

This policy does not apply to matters concerning interpersonal grievances exclusively affecting a reporting person, namely, grievances about interpersonal conflicts between the reporting person and another worker, or a matter concerning a complaint by a reporting person to, or about, his or her employer which concerns the worker exclusively. In such instances the Commission's Grievance Procedure should be consulted.

4. Commitment and Responsibility

4.1 Management Commitment

This policy sets out the process by which a worker can make a protected disclosure, what will happen when a disclosure is made and what the Commission will do to protect the reporting person.

The Commission and all levels of management are committed to the following:

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

4.2 Responsibility

Overall responsibility for this policy rests with the Commission. The Finance, Audit and Risk Committee of the Commission shall review the policy in place and make recommendations to the Commission as appropriate. Day to day responsibility for this policy is delegated to Joanna Macklin or such other person as the Chief Executive (to whom the Commission has delegated the function) may from time to time nominate for this purpose.

This policy shall appear on the Commission and the DSS websites and training shall be provided to all relevant parties as required.

5. Application

This policy applies to all workers in respect of whom the Commission is the employer as defined in the 2014 Act.

6. Making a Disclosure

A worker must make a disclosure in a manner set out in the 2014 Act to gain the protections of the 2014 Act.

6.1 A Work-Related Context

The relevant information that is disclosed by a worker must come to the attention of the worker in a work-related context. However, a disclosure of any wrongdoing which is the worker's, or the Commission's function to detect (for example inspections of mental health services), investigate or prosecute and does not consist of or involve an act or omission on the part of the employer does not come within the terms, or attract the protections and redress, of the 2014 Act.

The 2014 Act also provides that legal advisors are excluded from the protections of the 2014 Act, where information comes to their attention while providing legal advice. Where a claim to legal professional privilege could be maintained in respect of such information, it will not be a protected disclosure if the legal advisor discloses it, meaning that the legal advisor will not be able to gain the protections of the 2014 Act.

Different standards apply depending on the person or body to whom the worker discloses. A disclosure can be made in two ways:

(a) Within the Commission; or
(b) Outside of the Commission

6.2 Disclosures within the Commission

A worker who is concerned about a perceived wrongdoing may raise their concern in the first instance informally with their line manager. The earlier a concern is raised, the easier it is to take action. If a worker does not feel comfortable raising a matter with their line manager – due to the nature of the concern, its seriousness, or for some other reason – he/she can raise it with the Designated Person (DP). Line managers who receive a protected disclosure should inform the DP without delay of the details of the disclosure.

A worker is not required or entitled to investigate matters themselves to find proof of their suspicion and should not try to do so.

The Commission promotes a culture of transparency within the organisation. While all workers should subscribe to such a culture, the promotion and implementation of such measures is a matter for the Board and senior management of the Commission.

Disclosures can be made to the Designated Person at:

Name: **Joanna Macklin**

Telephone: 00353 1 211 9787

Email: protecteddisclosures@mhcirl.ie

Current Role: Head of DSS Panels

The Designated Person may delegate any of his or her functions where appropriate.
This will be advised to the person making the disclosure.

Disclosures relating to the Senior Leadership Team should be made to:

Name: John Farrelly

Role: Chief Executive

Telephone: 00353 1 6362400

Email: chiefexecutive@mhcirl.ie

Disclosures relating to the Chief Executive should be made to:

Name: John Hillery

Role: Chair of the Commission

Telephone: 00353 1 6362400

6.3 Disclosures outside of the Commission

The purpose of this policy is to provide an internal mechanism for making disclosures, reporting concerns, and investigating and remedying wrongdoing. In most cases, workers should not find it necessary to contact anyone externally. Internal disclosures will be taken seriously and the worker making the disclosure will receive appropriate protection.

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

(a) Other responsible person

Where the worker reasonably believes that the wrongdoing relates to the conduct of a person other than the worker's employer, or to something for which that other person has legal responsibility, then the worker can disclose to that other person.

(b) A prescribed person

Certain persons are prescribed by Statutory Instrument 367 of 2020 to receive disclosures ("prescribed persons"). This includes the heads or senior officials of a range of statutory bodies. The list is available at: https://www.irishstatutebook.ie/eli/2020/si/367/made/en/

A worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under SI 367 of 2020 e.g., a worker in an approved center may make a disclosure to the Commission in relation to the protection of the interests of persons detained in an approved center.

However, it is very important to note that the 2014 Act also provides an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

(c) The Protected Disclosures Commissioner

A worker may make a disclosure to the Protected Disclosures Commissioner. For any disclosure to the Protected Disclosures Commissioner, the worker must believe that the information disclosed, and any allegation contained in it, are substantially true. The Commissioner's primary duty is to refer any reports received under the 2014 Act to the most appropriate prescribed person (or other suitable person, if a prescribed person cannot be identified). Only as a last resort will the Commissioner directly follow-up on a report.

(d) A Minister of the Government

The 2014 Act provides that if a worker is (or was) employed in a public body, he/she may make a

disclosure to the Minister of whom any function related to the public body is conferred or imposed by or under any enactment. In the case of the Commission, the Minister of Health is the relevant Minister.

In order to make a disclosure to the relevant Minister, the worker must reasonably believe that the information disclosed tends to show one or more relevant wrongdoings and one or more of the following must also apply:

(i) The worker previously made a disclosure of substantially the same information to the Commission, a prescribed person, or the Protected Disclosures Commissioner, but no feedback has been provided to the worker in response to the report within the specified period or, where feedback has been provided, the worker reasonably believes that there has been no follow-up or that there has been inadequate follow-up; or

(ii) The worker reasonably believes the Chief Executive of the Commission is complicit in the relevant wrongdoing concerned; or

(iii) The worker reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.

(e) A legal adviser

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

Alternative external disclosures (in very limited circumstances)

It is preferable in most circumstances to disclose to the employer (i.e., the Commission) and, if that is not appropriate, to one of the disclosure options at **(a)** to **(e)** above.

It will rarely be appropriate to make alternative external disclosures where the disclosure could be dealt with through one of the other disclosure options above. It is very important to note that there are stringent statutory requirements for alternative external disclosures to qualify as protected disclosures under the 2014 Act. Workers considering making alternative external disclosures outside the scope of this policy are advised to familiarise themselves with the requirements under section 10 of the 2014 Act before making such an alternative external disclosure.

Information on protected disclosure and where you can seek advice and support can be found at https://www.gov.ie/en/publication/e20b61-protected-disclosures-act-guidance-for-public-bodies/

7. Confidentiality / Protection of Identity

The Commission hopes that workers will be able to report concerns openly, however, the

Commission understands that workers may wish to raise a concern in confidence under this policy. The Commission has a legal obligation under the 2014 Act to protect the identity of the reporting person who makes a protected disclosure and not to disclose any information that might identify the reporting person, subject to the exceptions outlined at 7.1 below.

The 2014 Act provides that a person to whom a disclosure is made (which in this context also includes any person to whom a disclosure is referred in the performance of their duties, such as follow-up/investigation of the disclosure, etc.,) must not disclose to another person any information that might identify the reporting person unless one of the exceptions prescribed in section 16 of the 2014 Act apply.

The Commission will ensure that access to information and documents on the Commission's IT system concerning the disclosure will be restricted to the DP and persons who require access in the performance of their duties. Only such access and information as is required to perform the duties will be provided to persons other than the DP.

7.1 Exceptions

A person to whom a disclosure is made may disclose the identity of the reporting person where the reporting person provides their explicit consent.

There are also certain circumstances provided for in the legislation, when a person to whom the disclosure is made may or may be required to (where there is a legal basis for doing so), disclose the reporting person's identity and/or identifying information. This may arise as follows:

- a person to whom the disclosure is made demonstrates that he/she took all reasonable steps to avoid disclosing the identifying information; or
- a person to whom the disclosure is made reasonably believes that the disclosure of the identifying information is necessary for the prevention of serious risk to the security of the state, public health, public safety or the environment ; or
- the disclosure of the identifying information by the person to whom the disclosure is made was otherwise required by law: or
- the disclosure of the identifying information is a necessary and proportionate obligation imposed by Irish or EU law in the context of official investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned (this relates to a statutory or criminal investigation or judicial proceedings. It does not relate to internal investigations conducted by the Commission).

Where it is decided that it is necessary to disclose the identity of the reporting person and/or identifying information, the reporting person will be informed of this decision in advance and the reasons for the disclosure, unless informing the reporting person would jeopardise:

- the effective investigation of the wrongdoing; or
- 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.

Where a worker is concerned that their identity is not being protected, he/she should notify the Head of HR, Senior Human Resources Manager or the manager of the DP. Any such concerns will be assessed and investigated if necessary, and appropriate action taken. A reporting person may request a review in the event that they are not satisfied with the decision made to disclose their identity (see section 14 below).

No attempt to identify the reporting person should be made by persons within the Commission to whom the identity has not been revealed as part of the receipt and follow-up of the disclosure. If such attempts are made, whether successful or not, this will be dealt with under the Commission's disciplinary process.

8. Anonymous Disclosures

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

While anonymous disclosures will be examined and acted upon to the greatest extent possible, it may not be possible to investigate anonymous disclosures where the identity of the reporting person is unknown.

A worker who makes an anonymous disclosure should be aware that, by virtue of them remaining anonymous, any investigation which may take place may be hampered by the constraint of obtaining further information from the worker making the disclosure. In addition, it may not be possible to provide feedback to the reporting person or ensure protection from penalisation.

A person who makes a protected disclosure anonymously and who is subsequently identified is entitled to the same protections against penalisation as any other person who makes a protected disclosure.

9. Protected Disclosures Process

9.1 How to Make a Disclosure

Disclosures can be made either in writing or orally.

9.1.1 In writing: the Commission recommends that a disclosure should be submitted using the attached link https://forms.office.com/e/Fmp9grXmPF.If the above link is not used,

a. the disclosure should be submitted to the dedicated protected disclosures email address protecteddisclosures@mhcirl.ie and

b. the person to whom the disclosure is made may transcribe the disclosure to the form on the link on behalf of the reporting person; and issue a copy to the reporting person as the record of their disclosure.

9.1.2 Orally: if the disclosure is made orally, a recording of the meeting or telephone call may be made with the consent of the reporting person, or if not recorded, minutes of the call / meeting will be made or a record made by transcribing the disclosure to the form on the link above. The minutes / copy of the transcription will be provided to the reporting person to confirm their agreement to the contents by way of signature. If a transcript of the recording is made, this should be provided to the reporting person to confirm their agreement to the contents by way of signature.

A reporting person will receive acknowledgment in writing of receipt of his or her disclosure, together with a copy of these Procedures, within seven calendar days of that receipt.

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

9.2 Initial Assessment

a) When a disclosure of alleged wrongdoing is made, an initial assessment will be undertaken by the DP (or authorised delegate). The initial assessment will involve an assessment of the disclosure to seek to determine whether or not it should be treated as a potential protected disclosure; whether or not it requires investigation by the Commission and whether or not it requires other appropriate action. The initial assessment may include other appropriate assessments, such as (for example) an assessment of whether interim measures need to be taken to protect the health and safety or property of any person.

b) If it is unclear whether information qualifies as a potential protected disclosure, the DP

will treat the information as a protected disclosure (and protect the identity of the reporting person, subject to Section 7.1 of this policy) until satisfied that the information is not a protected disclosure.

c) It may be necessary, as part of the initial assessment, to differentiate between a protected disclosure and a personal complaint. If the worker's concern falls more appropriately within the Commission's Grievance or Dignity at Work Procedures, he/she will be informed that it should progress in accordance with the appropriate procedure.

d) Where matters raised involve the Senior Leadership Team, the Chief Executive will conduct the initial assessment. Where matters raised involve the Chief Executive, the Chair will conduct the initial assessment.

e) Where a disclosure is found not to meet the criteria for being a protected disclosure under the 2014 Act, the DP or the Chief Executive or the Chair (as appropriate) will inform the reporting person of the reasons in writing. The DP or the Chief Executive or the Chair may if appropriate advise the disclosure alternative options that are available to the reporting person.

9.3 Investigation and Outcome

a) If the initial assessment establishes that the matter meets the criteria of a protected disclosure and requires an investigation by the Commission, an investigation will be initiated. Financial matters will normally be investigated by the Commission's Internal Auditors. Non-financial matters which involve the Senior Leadership Team may be investigated by an external person commissioned by the Chief Executive or the Chief Executive's nominee. Non-financial matters which involve the Chief Executive may be investigated by an external person commissioned by the Chair or the Chair's nominee. In other circumstances the investigation will normally be conducted by the DP or his or her nominee (who may be an internal or external person at the discretion of the DP). Where an investigation is conducted by a person other than the DP, the reporting person will be notified in writing of the name of the investigating person. In any investigation, the reporting person may be asked to provide additional assistance if required and if asked, is required to provide such assistance. The reporting person is entitled to bring a representative or colleague for support throughout this process. Such a person may be a trade union representative or a fellow employee of the Commission.

b) It is at the sole discretion of the DP as to whether an investigation will be carried out and the DP may decide that a more informal process is more appropriate if the relevant wrongdoing alleged in the disclosure is relatively straightforward, or is not very serious, or does not require consideration of the making of an adverse finding about any individual. The DP has discretion to decide that a more formal investigation is warranted at any stage

during the informal process and in that instance the informal process will end, and an investigation will commence.

c) In order to ensure that the principles of fair procedure and natural justice are complied with during the investigative process, the Head of HR or Senior Human Resources Manager will normally be advised in writing of any protected disclosures and may provide normal HR support to managers and investigators in respect of the disclosure. The DP will not disclose the identity of the person who has made the disclosure unless required or entitled to do so under Section 7.1 of this Policy. The reporting person will receive the protections provided by this policy or the 2014 Act. It is important to note, that some matters may be of such seriousness that an investigation will more appropriately be carried out externally or by professional experts in a particular area. 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. In such cases, the Commission is not obliged (but may decide to) conduct or commission an investigation of its own.

d) If an investigation is conducted or commissioned then, for the purposes of the investigation, the investigator(s) will have access to all necessary records, staff and facilities as required. The investigation will proceed having due regard for the necessary standards of professional investigations. Investigations will, where possible, include interviews with all appropriate individuals. Notes of interviews will be recorded in writing and a copy given to the person who was interviewed. The investigator(s) will determine the manner and means of keeping records of interviews. No person may take or keep an audio or video recording of interview meetings without the consent of the investigator(s). Subject to the requirement to provide fair procedures, interview meetings may be conducted in person or remotely at the discretion of the investigator(s).

e) If an individual is the subject of an allegation or wrongdoing, that individual will be afforded appropriate protection and the investigation will comply with the principles of natural justice and fair procedures. These will normally include (but not be limited to) learning what he or she has been accused of; learning who has accused him or her to the extent possible in accordance with the requirement to protect the identity of the reporting person; seeing copies of interview notes and other records that are relevant to the allegation against him or her; having the opportunity to put his or her case in defense of the allegations; having the opportunity to appropriately challenge evidence that has been produced against him or her; and being represented at interview meetings by a trade union representative or work colleague but not a person unconnected with the Commission.

f) The reporting person must treat any information about the investigation as confidential,

and any breach of this confidentiality may result in disciplinary action.

g) It is important to note that where an individual is the subject of an allegation, their right to fair procedures may include the right to challenge the evidence against them. The individual's right to do this will be balanced against the rights of the reporting person under the 2014 Act (particularly the reporting person's right, subject to exceptions, to have their identity protected). The DP will normally contact the reporting person and engage with him or her in respect of these issues prior to disclosing (to any other person) any information that would tend to disclose the identity of the reporting person.

h) The reporting person may request a review of a decision to disclose their identity and in line with section 7.1, a review will be carried out (except in exceptional cases). See section 14 below for further detail.

i) If, after an appropriate investigation has been undertaken, it is determined that wrongdoing has occurred, then the findings will be addressed and appropriate action (potentially including disciplinary action in respect if the persons who engaged in wrongdoing, where appropriate) will be taken.

j) Provided that a disclosure is a protected disclosure within the meaning of the 2014 Act, then the protections that apply to the reporting person are not affected by the outcome of the investigation.

k) The DP shall maintain written records of actions and decisions taken as a result of the investigation process. This information will be held safely and securely by or on behalf of the DP and (to the appropriate extent) the Senior Human Resources Manager in accordance with data protection legislation.

9.4 Feedback

a) Feedback will be provided to the reporting person within three months of the acknowledgement of receipt of the disclosure. If the reporting person requests in writing to the DP that they wish to receive further feedback after this, then further feedback will be provided at three-month intervals until the conclusion of the process.

b) Feedback will consist of information on the action taken or envisaged as follow-up and the reasons for this follow-up. Follow-up includes the assessment and investigation of the disclosure and actions taken to address the wrongdoing.

c) As part of the feedback, the reporting person will be kept informed, to an appropriate extent, of the progress of any investigation and its likely timescale. However, sometimes

the need for confidentiality may prevent the Commission from giving the reporting person specific details of an investigation, personal information relating to another worker, or any other action taken as a result of a protected disclosure. In addition, no information will be communicated that could prejudice the outcome of the investigation or any action that ensues. For example, the Commission will not inform the reporting person of the progress or outcome of any disciplinary process involving another worker. Such information is confidential between the Commission and the person the subject of the disciplinary process.

d) The final outcome of any investigations triggered by the report of the disclosure will be communicated in writing to the reporting person, subject to legal restrictions applying concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation. The full investigation report may not be provided to the reporting person.

10. Data Protection

The Commission will comply with all obligations arising under data protection legislation in respect of a protected disclosure, as well as the provisions of the 2014 Act in relation to data protection.

In accordance with these provisions, the Commission may, in certain circumstances, refuse to provide certain personal data as part of a response to a data subject access request. These circumstances include where, if the personal data were provided, it would hinder making disclosures, or impede or frustrate follow-up or investigations, or would reveal the identity of the reporting person.

Any person whose response to their data subject access request has been affected by this restriction may bring a complaint to the Data Protection Commissioner.

All written records relating to a protected disclosure shall be retained in accordance with the Commission's data protection policy.

11. Penalisation (including Dismissal and Detriment)

a) If a worker makes a protected disclosure (within the meaning of the 2014 Act), he/she is protected by law against any form of detrimental treatment or penalisation as a result of making the protected disclosure. The Commission will not penalise any worker for making a protected disclosure and will not tolerate any act of penalisation by any of its officers, managers, Commission members or employees.

b) Penalisation means any direct or indirect act or omission occurring in a work-related context, due the making of a disclosure, and which causes (or may cause) an

unjustified detriment. Penalisation includes:

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

This list is not exhaustive.

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

d) All reasonable steps will be taken to protect workers from penalisation. Workers who feel they have been subjected to penalisation should refer their concern as a grievance to the Senior Human Resources Manager and the concern will be assessed/investigated and appropriate action taken, where necessary.

e) Where a worker has made a disclosure, whether or not that has been assessed or

investigated the worker is still required to conduct themselves professionally and to continue to carry out their duties as normal.

f) 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.

12. Right to Make a Complaint to the Workplace Relations Commission

A reporting person who believes that he/she may have been penalised reserves the right to make a complaint to the Workforce Relations Commission, under schedule 2, section 12 of the 2014 Act, and seek a hearing.

A reporting person who believes he/she may have been penalised may also apply to the Circuit Court for injunctive relief under section 12 of the 2014 Act.

13. Disciplinary Action

The Commission reserves the right to initiate disciplinary action in the event that:

(a) Disclosures are made that are not protected disclosures (e.g., other than with the reasonable belief that the information disclosed tends to show one or more relevant wrongdoing) and that are otherwise inappropriate;
(b) Any worker is penalised by any employee, officer or manager of the Commission for making a protected disclosure;
(c)Any worker conceals or covers up any relevant wrongdoing.

14. Review of Decisions

Any party affected by any of the following processes may request a review in the event that they are not satisfied with:

(a) The decision made to disclose the identity of a reporting person;
(b) The conduct or outcome of any initial assessment/follow-up actions (including an investigation) taken on foot of the receipt of a report;
(c)The conduct or outcome of any initial assessment/investigation in respect of any complaint of penalisation.

An affected person can submit a request for review, within 28 days of the decision / conduct or outcome, to the Chair, setting out their reasons for seeking the review, who will arrange for a review to take place by a person of appropriate seniority in the Commission (or an appropriate external person, if the Chair believes that appropriate) who has not previously been involved in the aspect of the protected disclosure procedure that is under review.

A review will be a paper-based assessment to address the specific issues the applicant feels have received insufficient consideration. A review of an investigation will not involve a full re-hearing of the investigation.

This decision will represent a final internal decision on the matter.

15. Annual Report

An Annual Report will be submitted to the Commission (and will be published by the Commission not later than 1 March in each year), in relation to the protected disclosures (if any) received by the Commission in the preceding calendar year.

The Annual Report shall maintain the anonymity of all those involved and shall include the information required under section 22 of the 2014 Act.

16. Policy Review

This policy will be reviewed in line with any amendments to the protected disclosure legislation and reviewed internally one year from its implementation date and subsequently every two years or as required by the Commission.

17. Change control

The following table details changes made to this policy.

Change Control		
Date	Description	Approved By
02.04.2019	Implementation of Protected Disclosures Policy (Internal Workers)	The Commission
25.03.2021	Update of Protected Disclosures policy (Internal Workers)	The Commission
19.01.2023	Update of Protected Disclosures policy (Internal Workers)	The FARC and the Commission