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Protected Disclosures Policy (External Workers)

Mental Health Commission

Policy Name:	Protected Disclosures Policy (External Workers)
Policy No:	MHC-RPI-008
Division (if applicable):	
Date Implemented:	02.04.2019
Policy Updated:	19.01.2023
Revision Date:	19.01.2025
Author:	Legal
Approved by:	The Farc and the 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**") External Workers' policy on protected disclosures under the Protected Disclosures Act 2014 as amended ("**the 2014 Act**") and under the Health Act 2004 (as amended) ("**the 2004 Act**").

For the purposes of the 2014 Act, this policy applies to workers for whom the Commission is not the employer under the 2014 Act. For protected disclosures by workers for whom the Commission is the employer under the 2014 Act, please refer to the Protected Disclosures Policy (Internal Workers) Appendix 5 - Protected Disclosures Policy (Internal Workers).pdf (mhcirl.ie).

This policy sets out the process for the worker to make a disclosure, the Commission processes to be adhered to when a disclosure is made and the steps taken by the Commission to protect the worker.

The aims of this policy are:

a) to encourage the reporting by a worker of suspected relevant wrongdoings to the Commission, as soon as possible, in the knowledge that reports will be taken seriously and investigated as appropriate;
b) to provide guidance to workers as to the procedure for making a report (disclosure);
c) to reassure workers that genuine concerns can and should be raised, and that even if they turn out to be mistaken, these reporting persons are protected by legislation without fear of penalisation.

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 (protected disclosures) under this policy.

The Commission is committed to conducting its business with the highest standards of honesty and integrity. A culture of openness and accountability is essential to prevent wrongdoing and to address wrongdoing if it does occur.

A number of disclosure options are available under the 2014 Act as set out below. 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 protected disclosure.

1.3 Scope

This policy is intended to provide a safe and secure mechanism for workers (for whom the Commission is not the employer) who may wish to report any reasonable concerns that they may have about perceived wrongdoing.

a) This policy gives effect to and sets out the procedures for making a protected disclosure by a worker: to the Commission (delegated to Joanna Macklin), or the Inspector pursuant to

the 2004 Act; and

b) to the Prescribed Person namely the Chief Executive of the Commission, who has designated Joanna Macklin as the Designated Person (DP), pursuant to the 2014 Act.

2. Definitions

In this policy, expressions that are defined in the 2014 Act or the 2004 Act have the same meaning as in the 2014 Act or (as the case may be) the 2004 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" and "worker" have the same meanings as in the 2014 Act https://revisedacts.lawreform.ie/eli/2014/act/14/revised/en/html and in the 2004 Act Revised Acts (lawreform.ie) .

In cases of any inconsistency between definitions used in the 2014 Act and the 2004 Act the Commission will determine which definition is to be applied in any particular circumstance.

Reporting Person: The worker who discloses information in relation to a relevant wrongdoing. This expression includes a worker who makes a disclosure that is later established not to be a "protected disclosure" as defined.

Prescribed Person: Certain persons are prescribed by the 2014 Act and Statutory Instrument 367 of 2020 https://www.irishstatutebook.ie/eli/2020/si/367/made/en/ to receive disclosures in certain circumstances ("prescribed persons"). Prescribed persons are persons prescribed by the Minister, who 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.
The Chief Executive of the Mental Health Commission is a Prescribed Person for "all matters relating to the establishment and maintenance of high standards in the delivery of mental health services and the protection of the interests of persons detained in approved centres under the Mental Health Act 2001 (No. 25 of 2001), and compliance with that Act, instruments made under that Act and codes of practice prepared by the Mental Health Commission for persons working in the mental health services".

Designated Person (DP): The person designated by the Prescribed Person to be responsible for handling reports and, in particular, for –

(a) providing any person with information on the procedures for making a report,
(b) receipt and follow-up on reports made to the Prescribed Person, and
(c) maintaining communication with the reporting person for the purpose of providing feedback and, where necessary, requesting further information from 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 designate 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.

This policy applies to workers for whom the Commission is not their employer.

A "**worker**" means an individual who is or was: an employee; an independent contractor, whether or not the work/services were provided personally by the individual ; 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 shareholder or an undertaking; a member of the administrative, management or supervisory body of an undertaking 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).

3. Application

This policy applies to workers whose employer is not the Commission and who wish to make a protected disclosure of information to the Commission, where

(a) under the 2004 Act, and he/she has reasonable grounds for believing that the welfare or health of service users, patients or clients is at risk or where they hold information relating to the nature of any other subject matter referred to in this policy (see Section 4 below for more information), or

(b) under the 2014 Act, and he/she wishes to disclose relevant wrongdoing in respect of a matter relating to the establishment and maintenance of high standards in the delivery of mental health services and the protection of the interests of persons detained in approved centres under the Mental Health Act 2001 (No. 25 of 2001), compliance with that Act, instruments made under that Act and/or codes of practice prepared by the Mental Health Commission for persons working in the mental health services (see Section 5 below for more information).

The Assisted Decision-Making (Capacity) Act 2015 (the "**2015 Act**") allows for complaints to be made to the Director of the DSS in relation to various matters concerning assisted decision making, as provided for under the 2015 Act. The Commission has separate procedures for making such complaints, and these are available here https://decisionsupportservice.ie/search?search_api_fulltext=Complaints

Should a report of potential wrongdoing be made under this policy, which would be more properly addressed under the 2015 Act procedures, then it will not be treated as a protected disclosure and the report may be dealt with under the 2015 Act procedures. Similarly, should a report be made under the 2015 Act procedures which would be more properly addressed under this policy, then the report may be dealt with under this policy.

4. Making a Disclosure under the Health Act 2004

4.1 What is a Protected Disclosure under the 2004 Act?

There are three ways a protected disclosure can be made under the 2004 Act:

4.1.1 The 2004 Act provides that an employee in a relevant body can make a protected disclosure directly to the Commission if the employee has reasonable grounds to believe that:
(a) the disclosure is justified by reason of the urgency of the matter; or
(b) there has been no investigation of the matter, or if an investigation has taken place, there has been no action or recommended action on the subject matter of the disclosure

A relevant body for the purposes of the 2004 Act includes the Health Service Executive, an agency funded by the Health Service Executive to provide services on its behalf, a person who is receiving or has received assistance in accordance with Section 10 of the Child Care Act 1991 or a body established under the Health (Corporate Bodies) Act 1961.

4.1.2 The 2004 Act also provides that an employee in a body that provides mental health services other than a relevant body (referred to above) can make a protected disclosure, in good faith, to the Commission or to the Inspector where the employee has reasonable grounds for believing that the disclosure will show:

(a) that the actions of any individual employed by or acting on behalf of the body providing the services has posed, is posing or is likely to pose a risk to the health or welfare of a person receiving the service; or
(b) that an individual providing such services has failed, is failing or is likely to fail to comply with any provisions, regulations or statutory obligations pursuant to the Mental Health Acts; or
(c) that evidence of any matter falling within either of the above paragraphs (a) and (b) has been, is being or is likely to be deliberately concealed or destroyed.

4.1.3 In addition to the above, where a person makes, in good faith, a disclosure to the Inspector who is in the course of an inspection carried out in accordance with his/her principal functions under Section 51 of the Mental Health Act 2001 and where the person has reasonable grounds for believing it will show a risk to the health or welfare of the public, the disclosure will be a protected disclosure under the 2004 Act. The Commission will inform approved centres (as defined under the Mental Health Acts 2001-2018) as to the continuation of this provision.

4.2 Making a Disclosure

4.2.1 How to Make a Disclosure

Before making a disclosure or reporting a concern, the Commission generally encourages workers to use the internal mechanism for making protected disclosures provided for by their own organisation. If a worker has a concern about wrongdoing relating to the conduct or actions of a third party, to include a customer, supplier or service provider, the Commission encourages the worker to first report such concerns internally within the worker's organisation.

However, it is recognised that circumstances may arise where a worker wishes to make a disclosure external to their own organisation without recourse to that organisation's internal procedures for making disclosures. In these circumstances the worker should contact the DP, the Inspector or the Chief Executive, in accordance with the subject matter of the concern relevant to the 2004 Act, as referred in section 4.1 of this policy.

A disclosure made under this policy should ideally be in writing, preferably through completing the form on the following link https://forms.office.com/e/KK4aLcr59G but will also be accepted orally, and should include all relevant dates and other details necessary to enable a full and proper consideration and investigation of the disclosure.

The Commission may contact the reporting person to clarify the information reported or to request additional information that may be available to the reporting person. This contact will be to the postal or electronic address of the reporting person or by telephone or through the preferred communication channel, if indicated by the reporting person.

A reporting person will receive acknowledgment of receipt of his or her disclosure within seven days of that receipt (unless there are exceptional circumstances).

4.2.2 Initial assessment

Following receipt of a disclosure, the DP, the Inspector or the Chief Executive (or an appropriate person to whom any of those persons has delegated this function) will carry out an initial assessment to determine what action is appropriate, to include the scope of any investigation that may be required. The worker will be informed of the outcome of that assessment. If it is clear that the worker's concern does not fall within the remit of the 2004 Act, he/she will be informed of this promptly.

4.2.3 Investigation and outcome

In some cases, the DP, or the Inspector may request or authorise the Chief Executive to appoint an investigator or investigators with relevant experience of investigations or specialist knowledge of the subject matter.

The reporting person may be invited to attend additional meetings in order to provide further information to assist in the course of the investigation. The reporting person is entitled to have a person accompany them to the meetings, if he/she feels additional support is required.

The Commission may be limited in the feedback it can provide to the reporting person and will only provide feedback where possible and in the best interests of both parties.

The aim will be to keep the worker informed of the progress of the investigation and its likely timescale. However, sometimes the need for confidentiality may prevent the worker being entitled to specific details of the investigation or any actions taken as a result. The worker should treat any information relating to the investigation as confidential.

5. Making a Disclosure under the Protected Disclosures Act 2014

The 2014 Act designates the Chief Executive as a Prescribed Person to whom a protected disclosure may be made. Please note that a disclosure may only be made to the Chief Executive where that disclosure relates to compliance with the Mental Health Acts 2001-2018 ("**the 2001 Act**") (and any regulations and rules made pursuant to same), Codes of Practice developed by the Commission for persons working in the mental health services, the establishment and maintenance of high standards in the delivery of mental health services and the protection of the interests of persons detained in approved centres under the 2001 Act.

The Chief Executive as a Prescribed Person can only accept disclosures in relation to the above matters for which they are prescribed. If the disclosure does not relate to the above matters, then the disclosure will be sent to the appropriate prescribed person, or where there is no such appropriate person, it will be sent to the Protected Disclosures Commissioner. The person making the disclosure will be informed if either of these occur.

A list of all prescribed persons is available here gov.ie - Protected Disclosures (Whistleblowing): List of prescribed persons (www.gov.ie).

5.1 What is a Protected Disclosure under the 2014 Act?

A protected disclosure is defined in the 2014 Act as a disclosure of relevant information related to wrongdoing, made by a worker in the manner specified under the 2014 Act. Information is considered "relevant information" if:

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

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.

Relevant wrongdoings are the following:

(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 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.

Where a worker wishes to make a disclosure to the Chief Executive under the 2014 Act, the worker must;

(i) reasonably believe that the relevant wrongdoing falls within the above subject matter for which the Chief Executive is the Prescribed Person (please refer to reference number 45 in the Schedule of the following statutory instrument for more information - S.I. No. 367/2020 - Protected Disclosures Act 2014 (Disclosure to Prescribed Persons) Order 2020 (irishstatutebook.ie) and
(ii) reasonably believe that the information disclosed, and any allegation contained in it, are substantially true.

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.

5.2 . Making a Disclosure

As set out above, before making a disclosure under the 2014 Act, the Commission generally encourages workers to use the internal mechanism for making protected disclosures provided for by their own organisation.

Where a worker wishes to make a protected disclosure under the 2014 to the Chief Executive as a Prescribed Person, they must first ensure that the criteria set out at 5.1 above apply.

Disclosures can be made either in writing or orally.

a) In writing: the Commission recommends that a disclosure should be submitted using the attached link https://forms.office.com/e/KK4aLcr59G.If the above link is not used,
(i) the disclosure should be submitted to the dedicated protected disclosures email address protecteddisclosures@mhcirl.ie and
(ii) 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.

b) Orally: if the disclosure is made orally (by telephone, other voice messaging system or in person), 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.

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

A reporting person will receive acknowledgment in writing of receipt of his or her disclosure together with a copy of these Procedures, within seven days of that receipt (unless requested not to or to do so would jeopardise protection of reporting person's identity).

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/

5.2.1 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 it falls within the scope of the matters for which Chief Executive is a Prescribed Person; 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) The DP may seek further information from the reporting person if required, as to whether—
(i) there is prima facie evidence that a relevant wrongdoing may have occurred, and
(ii) the report concerns matters that fall within the scope of the matters for which the Prescribed Person has responsibility by virtue of the functions conferred on the Prescribed Person.

c) 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 and any persons concerned, subject to section 7 of this procedure) until satisfied that the information is not a protected disclosure.

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

e) Where the report concerns matters not in the scope of the matters for which the Chief Executive has responsibility as Prescribed Person, the report will be sent to the relevant prescribed person, or where there is no such other prescribed person, the Protected Disclosures Commissioner.

f) Where the initial assessment shows that there is a relevant wrongdoing but that it is clearly minor and does not require further follow up, the matter will be closed.

g) Where the initial assessment shows that the disclosure 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.

h) The reporting person will be informed as soon as practicable if any of the outcomes at (e), (f) or (g) arise and the reason for the decision.

5.2.2 Investigation

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.

The reporting person, shall, in respect of the report concerned and any follow-up procedures, without prejudice to his or her rights under the 2014 Act and to such extent as may reasonably and lawfully be required for the purposes of the 2014 Act, cooperate with a Prescribed Person in relation to the performance by the Prescribed Person of the functions conferred on that Prescribed Person by or under the 2014 Act.

The reporting person may be invited to attend additional meetings in order to provide further information to assist in the course of the investigation. The reporting person is entitled to have a person accompany them to the meeting, if he / she feels additional support is required.

5.2.3 Feedback

a) Feedback will be provided to the reporting person within three months of the acknowledgement of receipt of the disclosure. This period may be extended to six months by the Commission where justified due to the particular complexity of the report concerned. The reporting person will be notified of any extension of time as soon as practicable.

b) 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.

c) 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.

d) 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 or any other action taken as a result of a protected disclosure. 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 employer and the person the subject of the disciplinary process.

e) The final outcome of any investigations triggered by the report of the disclosure will be communicated in writing to the reporting person, subject to applicable legal restrictions 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.

5.3 Disclosures to Other Bodies

Apart from a disclosure to their own organisation or to the Commission, the 2014 Act allows a worker to make a disclosure to persons other than their employer in certain circumstances.

Different requirements need to be met in different cases, as set out below:

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) 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.

c) 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 their employer, 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 head of the public body 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 and, if that is not appropriate,

to a prescribed person or 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.

6. Protected Disclosures vs Personal Complaints

This policy should not be used to raise complaints relating to the worker's personal circumstances or terms and conditions of employment. 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 cases, the worker should refer to the appropriate procedures as provided for by his or her own organisation.

7. Confidentiality / Protection of Identity

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 his/her 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 other persons.

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) a person to whom the disclosure is made demonstrates that he/she took all reasonable steps to avoid disclosing the identifying information; or
b) 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;
c) the disclosure of the identifying information by the person to whom the disclosure is made was otherwise required by law; or
d) 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).

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:

a) the effective investigation of the wrongdoing; or
b) the prevention of serious risk to the security of the State, public health, public safety or the environment; or
c) the prevention of crime or prosecution of a criminal offence.

The reporting person may request a review of this decision and a review may be carried out, where practicable.

7.2 Identity of Persons Concerned

A “person concerned” is a person who is referred to in a disclosure as a person to whom the relevant wrongdoing is attributed or with whom that person is associated.

The Commission has a legal obligation under the 2014 Act to protect the identity of persons concerned for as long as any investigation triggered by the disclosure is ongoing.

The identity of a person concerned may be disclosed where the Commission reasonably considers that such disclosure is necessary for the purposes of the 2014 Act or where such disclosure is otherwise authorised or required by law.

7.3 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 the protected disclosure recipient).

While anonymous disclosures made using the external channel will be acted upon to the

greatest extent possible, it may not be possible to investigate anonymous disclosures in full where the identity of the reporting person is unknown. For example, it may not be possible to obtain further information from the reporting person in these circumstances.

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.

Workers, who are concerned about possible penalisation or reprisals if his/her identity is revealed, should come forward to the DP, the Inspector or the Chief Executive as appropriate, and appropriate measures can then be discussed and taken to preserve confidentiality.

8. Penalisation

If a worker makes a protected disclosure (within the meaning of the 2014 Act or the 2004 Act), he/she is protected by law against any form of detrimental treatment or penalisation as a result of making the protected disclosure.

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:

a) suspension, lay-off, dismissal or equivalent measures,

b) demotion, withholding of or loss of opportunity for promotion,

c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,

d) withholding of training,

e) a negative performance assessment or employment reference,

f) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),

g) coercion, intimidation, harassment, or ostracism,

h) discrimination, disadvantage or unfair treatment,

i) injury, damage or loss,

j) threat of reprisal,

k) 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,

l) failure to renew, or early termination of, a temporary employment contract,

m) harm, including to the person'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, or

q) psychiatric or medical referrals.

This list is not exhaustive.

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 any act or omission set out in the list of examples of penalisation above.

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.

9. Criminal Offences

Section 19(1) of the Criminal Justice Act 2011 (2011 Act) makes it an offence to withhold information, without reasonable excuse, where an individual knows or believes the information might be of material assistance in preventing the commission by another individual of a 'relevant offence' or securing the apprehension, prosecution or conviction of any individual for a 'relevant offence'.

For the purposes of the 2011 Act a relevant offence includes 130 different types of offences including but not limited to banking offences, investment of funds and other financial activities, company law offences, money laundering and terrorist activities, fraud and theft offences, bribery and corruption offences, consumer protection offences and criminal damage to property

offences.

If an individual has this type of information and/or is aware, concerned or suspects that a 'serious offence' or a 'relevant offence' has been or is being committed; he/she is required to report it to An Garda Síochána. Before he/she makes a disclosure or reports such information or a concern to An Garda Síochána, the Commission encourages the individual to seek advice in accordance with the protected disclosures policy within their own organisation or in accordance with the relevant procedures outlined in this policy.

No cause of action in civil proceedings, other than a defamation action shall lie against a person in respect of the making of a protected disclosure.

In a prosecution of a person for any offence prohibiting or restricting the disclosure of information, it is a defence for the person to show that, at the time of the alleged offence, the disclosure was, or was reasonably believed by the person to be, a protected disclosure.

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 right of access to personal data may be restricted in certain circumstances such as where if the request were granted, it would hinder reporting, or impede or frustrate follow-up or investigations, or would reveal the identity of the reporting person or any person concerned. Any person affected by this restriction may being 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. 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 the DP namely Joanna Macklin (or such other person as the Chief Executive (to whom the Commission has been 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.

12. Contact

To contact the Commission or for further information on making a protected disclosure please contact:

Name	Joanna Macklin
Telephone	00353 1 211 9787
Email	protecteddisclosures@mhcirl.ie
Current Role	Head of DSS Panels

To contact the Inspector of Mental Health Services:

Name	Dr Susan Finnerty
Telephone	00353 1 636 2408
Email	susan.finnerty@mhcirl.ie
Role	Inspector of Mental Health Services

To contact the Chief Executive:

Name	John Farrelly
Telephone	01 6362400
Email	protecteddisclosures@mhcirl.ie
Role	Chief Executive

13. Annual Report

An Annual Report will be submitted to the Commission (and will be published by the Commission no 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

14. Policy Review

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

15. Related Documents

- Health Act 2004 (as amended by the Health Act 2007)
- Protected Disclosures Act 2014 (as amended)
- S.I. No. 367 of 2020 - Protected Disclosures Act 2014 (Disclosure to Prescribed Persons) Order 2020
- Guidance under section 21(1) of the Protected Disclosures Act 2014 for the purpose of assisting public bodies in the performance of their functions under the Act, Department of Public Expenditure and Reform
- Mental Health Acts 2001 to 2018
- Health (Corporate Bodies) Act 1961
- Section 19(1) of the Criminal Justice Act 2011

16. 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 (External Workers)	The Commission
25.03.2021	Update of Protected Disclosures Policy (External Workers)	The Commission
19.01.2023	Update of Protected Disclosures Policy (External Workers)	The FARC and the Commission