

# Policy on Protected Disclosure Reporting in the Workplace

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Chúnamh Dlíthiúil**  
**Legal Aid Board**

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# Policy on Protected Disclosure Reporting in the Workplace

## Introduction and Principles Underlying Policy

The Legal Aid Board is a member of the Integrity at Work programme, a Transparency International Ireland initiative. As part of its commitment to protecting workers who raise concerns of wrongdoing, the Board has signed and complies with the Integrity at Work Pledge to ensure that workers reporting wrongdoing will not face penalisation and that action will be taken in response to the concerns raised. A copy of the Pledge is in Appendix I.

By fostering and supporting a strong ethical culture, incorporating the principles of openness and transparency, the Board encourages workers to raise concerns regarding alleged wrongdoing in the workplace. This policy should be considered a part of the Board's approach to good corporate governance ensuring that high standards are maintained and a culture of 'speaking up' is encouraged.

Workers should be protected against reprisals even if the worker's concern is ultimately misguided or mistaken. Accordingly, it is always appropriate for workers to raise concerns when they are based on a reasonable belief irrespective of whether any wrongdoing is in fact subsequently identified.

It is important to emphasise that this policy is not a replacement for existing mandatory reporting regimes, nor a replacement for existing grievance mechanisms. Workers should be aware that in order to attract protections under the Protected Disclosures Act 2014 (the Act) certain conditions must be adhered to.

## To Whom does this Policy Apply?

This policy applies to all workers in the Legal Aid Board whether permanent or temporary, long term contractors or any other persons in receipt of payment for services to the Board. Work experience students and trainee solicitors and trainee mediators are also considered workers as per the Act.

## What is the Difference Between a Protected Disclosure and Making a Complaint?

The aim of this policy is to prevent harm to others or to the Organisation as a whole. It does not cover personal complaints or personal grievances. The Board's Grievance Procedure is designed to deal with individual complaints from workers in a fair, prompt and impartial manner. There are several stages in this process, including a requirement

for the complainant to outline, in writing, the nature of the grievance and the corrective action sought where the grievance is not resolved at the initial informal stage of the process. The Grievance Procedure is available on iLAB or can be obtained through HR.

A protected disclosure is where a worker has information about a relevant wrongdoing. A protected disclosure on foot of this policy and the Protected Disclosures Act 2014 occur when a worker raises a concern about alleged wrongdoing or potential illegality that affects others as distinct from a matter that affects them personally which is more appropriately dealt with under the Grievance Procedure.

This policy does not cover a disclosure where the worker knowingly conveys false, misleading, frivolous or vexatious information. If it transpires that a worker makes a disclosure, which they know to be false or do not believe to be true the Board may take disciplinary or other appropriate action.

### *Examples of a Grievance*

- Complaint around selection criteria for a promotional post.
- Complaint around allocation of overtime.
- Matters concerning interpersonal issues exclusively affecting the worker.

### *Examples of a Whistleblowing Disclosure*

- In a hazardous work situation information regarding a failure to provide or wear protective clothing and adhere to health and safety guidelines.
- Information about the improper use of funds, bribery and fraud.

## *What Type of Disclosure is Covered by the Policy?*

A worker may observe behaviour that they feel is not inside acceptable boundaries. If they wish to proceed with a formal disclosure, while workers are not expected to have absolute proof of misconduct or wrongdoing, they will need to be able to demonstrate and support reasons for their concern. A disclosure of information made by a worker in the reasonable belief that one or more of the following types of wrongdoing may have occurred, is occurring or is likely to occur is covered by the policy:

- A criminal offence.
- A failure to comply with a legal obligation.
- A miscarriage of justice.
- The endangering of an individual's health or safety.
- Damage to the environment.
- Unlawful or otherwise improper use of funds.
- Fraudulent activity.
- That an act or omission is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement.
- Concealment or destruction of evidence relating to the above.

The list above is for illustrative purposes and is non exhaustive. The Policy does not relate to disclosures of wrongdoing if the matter is one which is the function of the worker or Board to detect, investigate or prosecute. A worker may, however, make a disclosure where they have a reasonable belief that this function is not being fulfilled properly in the Board.

## When Should a Worker Make a Disclosure?

A worker should make a disclosure if in their reasonable belief any of the wrongdoings outlined in section 4 or other possible improprieties may have occurred, is occurring or is likely to occur. A concern which is not reported may allow the malpractice to continue, to the detriment of the Board. Workers who make disclosures about alleged breaches of Legal Aid Board or Civil Service policy such that harm may be arising to others or to the Organisation will also be afforded the protections by the Board under this Policy.

## Internal Channels Through Which a Disclosure can be Reported?

The normal channel through which a report should be made in the first instance is line management. Individuals may raise concerns in writing or verbally with their line manager at higher executive level or above. If an individual feels unable to raise the matter with line management then the Head of Department may be contacted.

If the worker reasonably believes there are circumstances preventing him or her from reporting his or her concerns within the line management structure, then the worker can contact the Board's confidential recipient who is Ms Lucy O'Sullivan, Assistant Director, Human Resources. In doing so, the worker should clearly set out the circumstances which prevent reporting the matter to line management in the first instance.

Where a worker has reported to line management and is dissatisfied with the response or outcome of line managements' investigation then they retain the right to further report the concerns to the confidential recipient.

Suggested Format for Making an Internal Disclosure:

- Give a description of the 'relevant wrongdoing'.
- Provide any information that tends to show the relevant wrongdoing so as to assist in the assessment of the matters raised in the disclosure.
- Date the disclosure.
- Give your preferred contact details.
- State that the disclosure is made under the Protected Disclosures Act and state if you do/do not expect confidentiality.

Where it is intended to communicate the concern directly to the confidential recipient the report can be made to:

**Lucy O'Sullivan**  
**Confidential Recipient**  
**lxosullivan@legalaidboard.ie**  
**066 947 1009**  
**087 103 1496**

## Disclosure to a Minister

A worker employed in a public body may make a protected disclosure to a Minister of the Government on whom any function relating to the Public body is conferred rather than to their immediate employer. In the case of Legal Aid Board workers, they can make a report to the Minister for Justice.

The evidential criteria for making a disclosure to the appropriate Minister is the same as that which applies to a disclosure made internally to an employer i.e. the worker reasonably believes that the information being disclosed shows or tends to show wrongdoing.

## External Channels through a Disclosure can be Reported

The Protected Disclosures Act 2014 provides for external reporting of wrong-doing to appropriate authorities in circumstances where:

- The worker reasonably believes that the information being disclosed and any allegations contained in it are substantially true;
- The wrongdoing falls within matters in respect of where there is a 'Prescribed Person'.

A 'Prescribed Person' is the external authority as prescribed by Ministerial Order (under Section 7 of the Protected Disclosures Act 2014). Prescribed Persons are normally the Regulating or Supervising Authority or Inspectorate with responsibility for dealing with any 'relevant wrongdoing' falling within the scope of the Protected Disclosure Act 2014 such as the Health and Safety Authority and the labour inspectorate in the Workplace Relations Commission. For more information on the 'Prescribed Person', please see [list of prescribed persons](#).

The 'Prescribed Person' may have their own procedures for making a disclosure and staff are encouraged to seek advice from their trade union, a legal representative or the Speak Up Helpline in advance of making a disclosure, see 'Guidance' below.

If the disclosure contains taxpayer information it is not protected unless it is made in accordance with certain conditions to the Comptroller and Auditor General.

## Other Persons

The Protected Disclosure Act 2014 provides for external reporting to other persons. Whilst there is no definitive list of who can or who cannot be an 'Other Person', instead the legislation requires the disclosure to the 'Other Person' to be 'reasonable' bearing in mind:

- The identity of the person to whom the disclosure is made;
- The seriousness of the relevant wrongdoing;
- Whether the wrongdoing is continuing or is likely to occur in the future;
- Any action which the employer of the worker or the person to whom the previous disclosure was made has taken, or might reasonable be expected to have taken as a result of the previous disclosure.

There are other criteria that must also be met such as the relevant wrongdoing must be sufficiently serious and the worker reasonably believes;

- That the information disclosed and any allegation in it is substantially true;
- That the disclosure is not made for personal gain, and;
- In all circumstances of the case it is reasonable for the worker to make the disclosure.

In addition, one or more of the following conditions must be met:

- The person making a disclosure believes that they would be subject to penalisation by the employer if disclosure were to be made to the Board, a responsible person, a prescribed person, or the Minister.
- In the absence of a prescribed person, the person making a disclosure believes that disclosure to the Board or a responsible person would result in the destruction or concealment of evidence about the wrongdoing.
- The person has previously disclosed substantially the same information to the Board, a responsible person, a prescribed, or the Minister.
- The subject matter of the disclosure is of an exceptionally serious nature.

The organisation encourages workers to make their disclosure internally, even if they have already made an external report. It is important that the Board are aware of any wrongdoing as soon as possible and also this enables us to protect the worker from any potential penalisation which could arise as a result of the disclosure.

If a worker is unsure whether to use the procedure or s/he wants independent advice at any stage, they are encouraged to obtain external independent advice.

## Guidance on Making a Disclosure



The Board is a member of the Integrity at Work programme, a Transparency International (TI) Ireland initiative. Independent and confidential advice for anyone considering reporting a concern or making a protected disclosure is available via TI Ireland's Speak Up Helpline at 1800 844 866, Monday to Friday 10am to 6pm. You can also make

an enquiry via secure online form or encrypted text. For further information, please see [www.speakup.ie](http://www.speakup.ie).

Where appropriate, the Helpline can refer callers to access free legal advice from the Transparency Legal Advice Centre. The Civil Service Employee Assistance Service may also be contacted for guidance, please see [www.cseas.per.gov.ie](http://www.cseas.per.gov.ie) or contact 0818 008120.

## Confidentiality

Confidential reporting is where an individual makes a report on the understanding that their name and other identifying details will not be shared by the recipient without the discloser's permission.

The Legal Aid Board will take all reasonable steps to treat disclosures made through this policy in a confidential and sensitive manner, subject to the need to ensure the effective investigation of the alleged wrongdoing. The Board will not disclose the worker's identity without their consent, unless it is required by law or necessary for the effective investigation of the alleged wrongdoing. It is considered that the principles of natural justice do not require a person associated with an allegation of wrongdoing to be notified of the receipt of an allegation. Nor does the person accused of wrongdoing have the right to know the identity of the worker who has made the report. Where an investigator wishes to question or seek information from the person accused of wrongdoing, the subject is entitled to be given details of what is alleged and given the opportunity to respond and to contest the allegation. In the interests of natural justice, the person/s against who the allegation is made will be informed in writing of the allegation and all of the supporting evidence, and will be allowed full opportunity to comment at an

appropriate stage in the process and before the investigation is concluded. The person accused of wrongdoing is entitled to a copy of the investigation report.

From time to time, it may not be possible to provide details of the outcome of an investigation process to a discloser in order to respect the rights of the subject of a disclosure. A discloser should be informed that appropriate action has been taken but is not generally entitled to know what that action was.

This organisation is committed to protecting the identity of the worker raising a concern and ensures that relevant disclosures are treated in confidence. The focus will be on the wrongdoing rather than the person making the disclosure. However, there are circumstances, as outlined in the Act, where confidentiality cannot be maintained particularly in a situation where the worker is participating in an investigation into the matter being disclosed. Should such a situation arise, we will make every effort to inform the worker that his/her identity may be disclosed.

## Anonymous Reporting

Anonymous reporting is where an individual makes a report without leaving their name or identifying information. Reports or concerns expressed anonymously will be considered at the discretion of the confidential recipient. In exercising this discretion the confidential recipient will take into account; the seriousness of the issues raised, the credibility of the concern and the likelihood of confirming the allegation from attributable sources. Anonymous reports will be taken seriously however the effectiveness of any investigation may be limited where an individual chooses not to be identified.

The Board strongly encourages staff to identify themselves in making a report to facilitate the investigation. This will make it easier to assess the disclosure and to take appropriate action, and to protect the worker from penalisation.

## Investigation - What Happens Once a Disclosure is Made?

Once a disclosure is made the process that is set out at Appendix II will be adopted. In line with the reporting cascade, the issue will be assessed by the line manager reported to or they will refer the matter to the confidential recipient for assessment. If there appears to be apparent substance to the allegation, an investigation will be carried out by an appropriately qualified person, be that of the confidential recipient of their nominee. If not already notified, the person who has submitted the report will be advised of the name and contact details of the person who is handling the matter and may be asked to provide assistance if required.

A worker who is the subject of a disclosure is entitled to fair treatment. While an investigation is on-going, all reasonable steps will be taken to protect the confidentiality of those who are the subject of a protected disclosure pending the outcome of the investigation. In some circumstances, where the fact of the investigation is widely known, the conclusion of the investigation may involve a statement of exoneration.

Regular contact will be maintained with the discloser during the investigation.

## Protection from Penalisation

An employee cannot be penalised for making a disclosure. Workers should inform the



confidential recipient immediately if they have experienced an act of penalisation by any worker as a result of having made a protected disclosure.

Penalisation includes:

- Suspension, lay-off or dismissal.
- Demotion or loss of opportunity for promotion.
- Transfer of duties, change of work location, reduction in wages or changing in working hours.
- Any discipline, reprimand, or other penalty.
- Unfair treatment.
- Coercion, intimidation or harassment.
- Discrimination, disadvantage or unfair treatment.
- Injury, damage or loss.
- Threat of reprisal.

## Representation/Supports

Any worker making a protected disclosure or any worker against whom an allegation has been made must have their constitutional right to natural justice and fair procedures upheld in accordance with all relevant employment legislation. In this regard, appropriate representation, if requested, should be accommodated.

## Right of Appeal

A worker is entitled to appeal at any stage in this process and following any decision arising from the assessment stage or investigation stage of the process. Notice of appeal shall be in writing and must be submitted within 5 working days of the decision to the Director of Human Resources.

The appeal will be heard by an independent committee. No member of this committee/body will have been involved at any stage of the assessment or investigation stages of the process.

## Record Keeping

Records of concerns raised, including the outcome, will be maintained for a minimum of five years after the closure of the case. These records will be maintained in a confidential and secure environment. A summary report on all protected disclosures will be included in the Board's Annual Report. In drafting the summary care will be taken to ensure that, while the substance of the disclosures is outlined, it will not be possible to identify the parties involved.

## Review of Policy

The Legal Aid Board will review this policy every 12 months. Section 22 reports are published annually on the [Legal Aid Board website](#).

## Appendix I - Integrity at Work Pledge



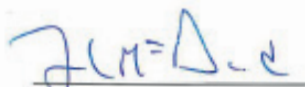
### THE INTEGRITY AT WORK PLEDGE


Legal Aid Board recognises the importance of developing 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.

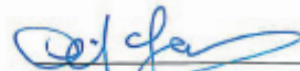
In committing ourselves to this pledge we will work towards implementing a 'whistleblowing'/protected disclosures policy and procedures which:

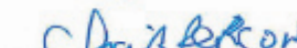
- a. Promote the reporting of wrongdoing or the risk of harm to a responsible person inside the organisation or external bodies as appropriate.
- b. Provide comprehensive information about the types of disclosures that can be made, by whom and in respect of what.
- c. Encourage our workers to seek professional 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 of 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 our Board of Directors (or other relevant governance body) or with the Minister of Public Expenditure and Reform (where appropriate).
- k. Ensure that our managers and responsible persons are aware of our commitments under this Pledge and related policies and procedures and are adequately trained in handling a report.
- l. Publicise our commitment to the Integrity at Work initiative with our workers and other relevant stakeholders.

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

  
Signed

  
Position Held

  
Signed

  
Position Held

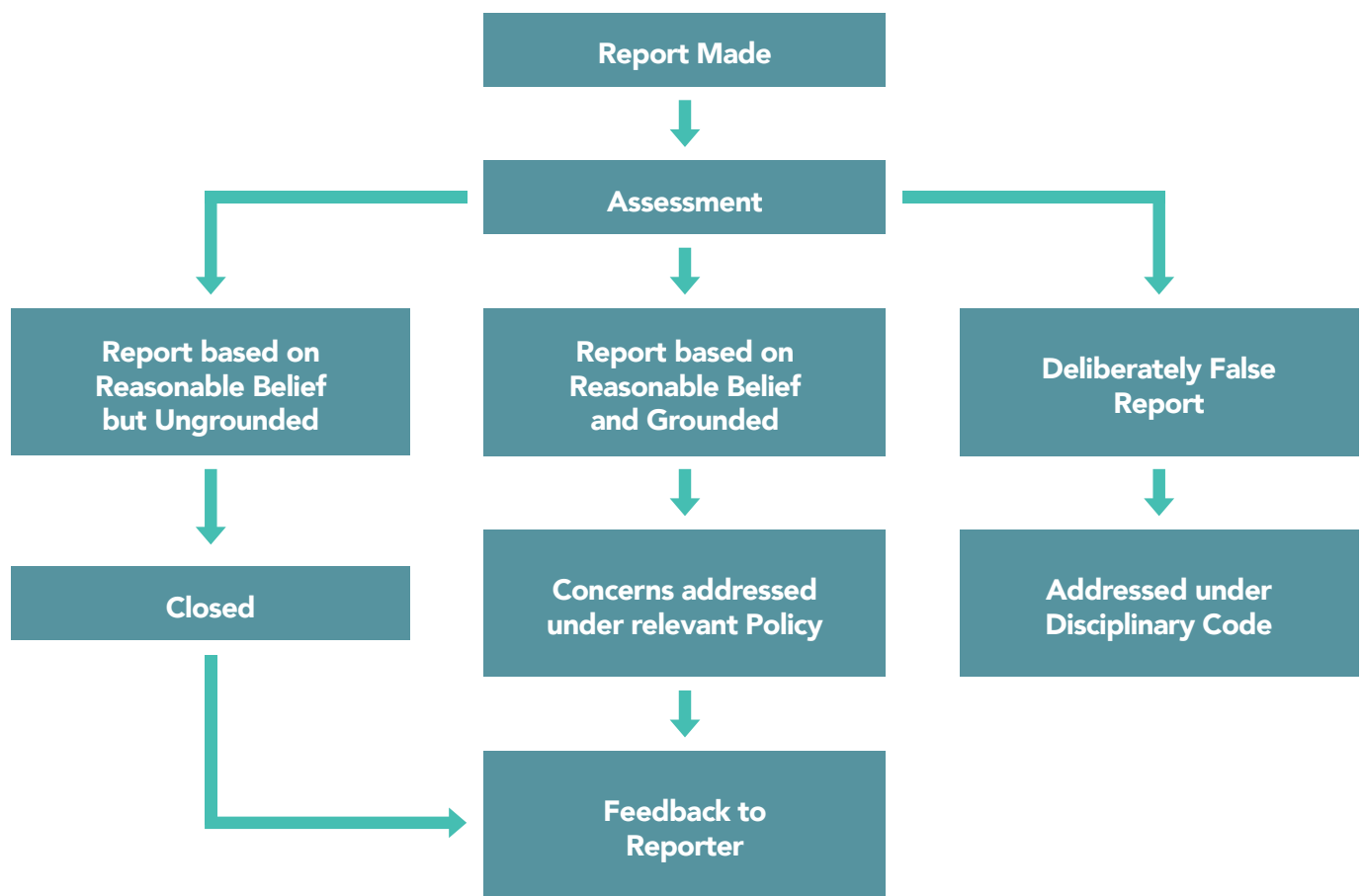
## Appendix II - Guidance for the Confidential Recipient and Managers in Dealing with Disclosures

All reported disclosures about perceived wrongdoing in the workplace must be treated seriously.

The Confidential Recipient or the manager to whom a concern is disclosed should:

- Record the disclosure and the steps taken to deal with it.
- Inform the Confidential Recipient.
- Clarify the basis of the concerns raised with the worker.
- Establish what evidence is available to support the concern.
- If, on preliminary examination, the allegation is judged to be wholly without substance or merit, dismiss the allegation and inform the person who made the report.
- If, on preliminary examination, there appears to be prima facie substance to the allegation proceed with an investigation or appoint a qualified person to carry out the investigation.
- Risks assess the issue and take immediate action if the alleged wrongdoing involves a serious loss or danger to others.
- Carry out relevant enquiries promptly, sensitively and discretely, taking all reasonable steps to protect the identity of the maker of the disclosure.
- If it is necessary to reveal the worker's identity to undertake an effective enquiry, consult with the worker.
- Obtain evidence from any relevant witnesses.
- Assess whether the disclosure report is based on:
  - A reasonable belief but ungrounded,
  - A reasonable belief and grounded, or
  - A deliberately false report.
- Take appropriate action if the disclosure is grounded.
- If the disclosure is considered to be deliberately false, based on the outcome of the enquiries made, refer the matter to the Director of Human Resources who will determine whether action under the Civil Service Disciplinary Code might be warranted.
- Provide written feedback to the worker within 20 days, including any proposed action or alternatively provide periodic feedback for purposes of reassurance that the investigation is being progressed.
- Take great care in providing information to the person who has made the disclosure to ensure that it does not breach the legal rights of any person who has been accused of wrongdoing.
- Report the outcome and in the case of managers forward all records to the Confidential Recipient and the Director of Human Resources. The Confidential Recipient should forward all records in his/her possession to the Director of Human Resources.

## Appendix II - Internal Reporting Process Workflow







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